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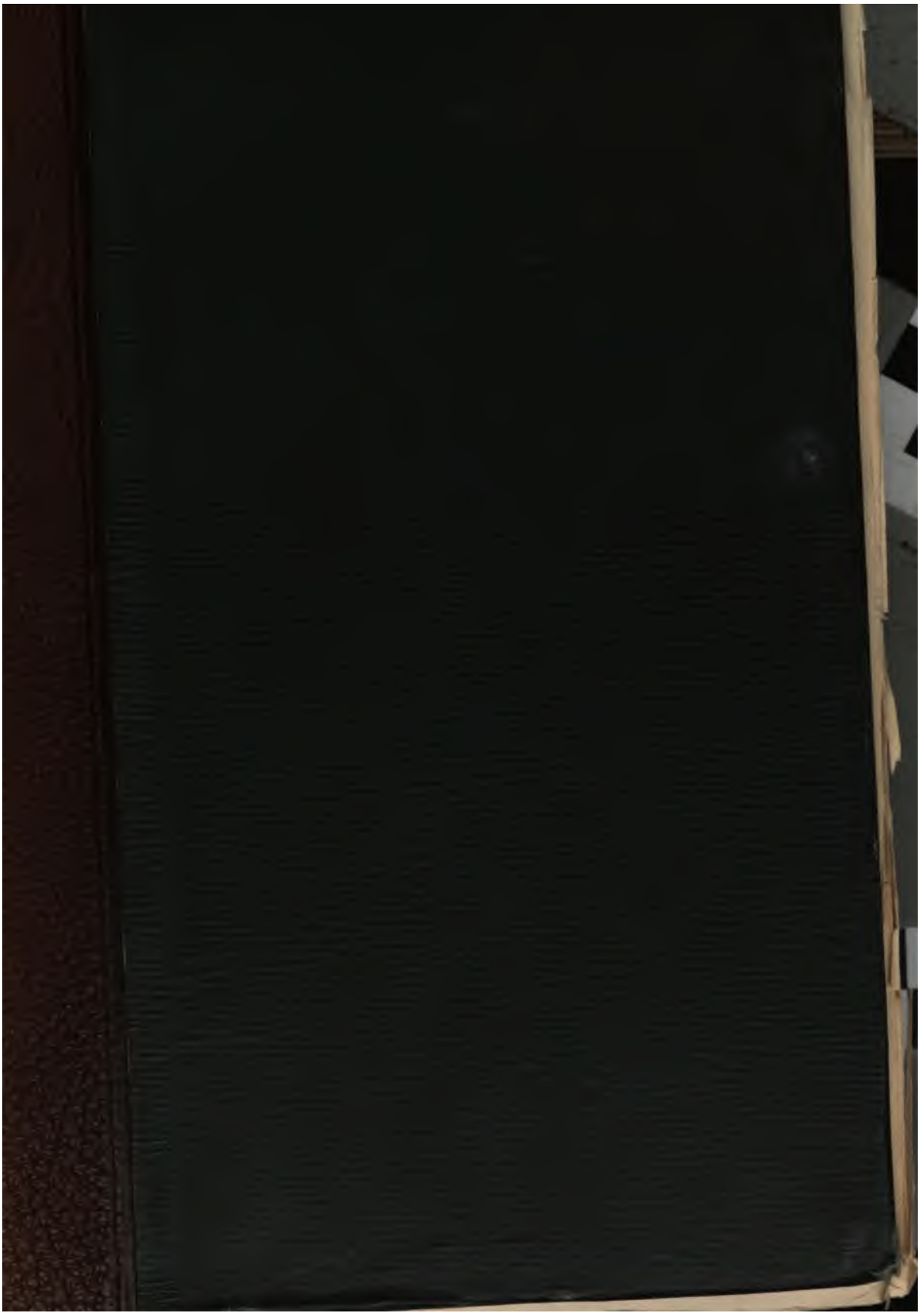

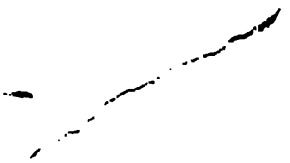

THE WRITINGS

OF

JAMES MADISON

VOLUME V.

1787–1790

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October, 1904

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OF

JAMES MADISON

COMPRISING HIS PUBLIC PAPERS AND HIS PRIVATE
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1787–1790

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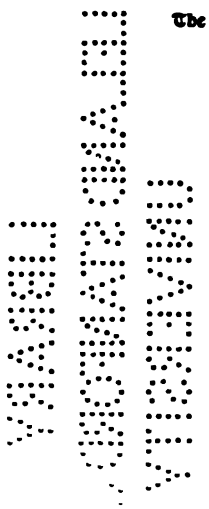

CHRONOLOGY OF JAMES MADISON.

1787–1790.

1787.	
Sept. 30.	Attending Congress at New York.
Nov.	Begins Writing *The Federalist.*
	In Philadelphia.
Nov. 18.	Returns to New York.
1788.	
March 4.	Sets out for Virginia.
April.	Elected a Member of Virginia Convention.
June 1–27.	In the Convention.
July–Oct.	Attending Congress at New York.
Nov. 8.	Defeated in Legislature for U. S. Senate.
Nov.	In Philadelphia.
Dec.	Leaves for Orange.
1789.	
Jan.	Contesting for Election to House of Representatives.
Feb. 2.	Elected to House of Representatives.
Feb. 24.	At Mount Vernon on his Way to New York.
March.	Arrives at New York.
April 2.	Made Member of Committee on Rules of House of Representatives.
April 8.	Introduces Revenue Bill.
April 9, 21, May 9, 12, 14.	Speeches on Duties on Imports.
May 11.	Speech on Titles.
May 19.	Speech on Removals from Office.
May 22.	Speech on Citizenship.

June 6, 17, 18, 22.	Speeches on Removals from Office.
June 8.	Speech on Amendments to the Constitution.
June 29.	Speech on the Duties of the Comptroller.
Aug. 13.	Speech on Amendments to the Constitution.
Sept. 3, 18, 28.	Speeches on Location of Capital.
Oct.	Returns to Orange.
1790.	
January.	In New York Attending Congress.
Feb. 3.	Speech on Naturalization.
Feb. 11.	Introduces Resolution to Provide for Public Debt.
	Speech on Public Debt.
Feb. 24.	Speech on Assumption of State Debts.

CONTENTS OF VOLUME V.

PAGE

Chronology XV

1787.

To Edmund Pendleton, September 20th . . . 1
Encloses copy of the Constitution.

To James Madison, September 30th 2
Constitution forwarded to the States—Prospects of approval.

To George Washington, September 30th . . . 4
Opposition to Constitution in Congress—Prospects of approval.

To Edmund Randolph, October 7th 8
Opposition to Constitution in Massachusetts and Pennsylvania.

To George Washington, October 14th 9
Pinckney's pamphlet—Opposition to the Constitution—Arrangements for the Western country.

To George Washington, October 18th 11
Mason's opposition—Pendleton's attitude—Henry's attitude—Opposition.

To Edmund Randolph, October 21st 15
Books for the University—Opposition in Virginia—Favorable reception of Constitution.

To Thomas Jefferson, October 24th 17
Books received—Sends copy of Constitution and explanation—Prospects of ratification—Payment of loan—Crops—Georgia.

To George Washington, October 28th 42
Reasons for ratification—Pinckney's character—Sketch of the Potomac.

PAGE

To Edmund Pendleton, October 28th 44
Pendleton's objections—Chances of ratification.

To Archibald Stuart, October 30th 47
Strength of the opposition—State constitution.

To Ambrose Madison, November 8th 50
Candidacy for Virginia Convention—Chances of adoption.

To George Washington, November 18th 53
Criticism of Constitution in Virginia—Progress in other states—Sends seven numbers of *Federalist*—No Congress yet.

To Edmund Randolph, November 18th 56
Randolph's scheme—Progress of Constitution—Foreign news—Congress.

To George Washington, November 20th 59
Encloses numbers of *Federalist*—Foreign news—Progress of Constitution.

To Edmund Randolph, December 2d 60
No quorum in Congress—Progress of the Constitution—The *Federalist*.

To George Washington, December 7th 61
Sends numbers of the *Federalist*—Chances for adoption of the Constitution.

To Thomas Jefferson, December 9th 62
Books—Trees—Birds and animals—Chances for the adoption of the Constitution—Henry's opposition—Uncertainty about European affairs.

To George Washington, December 14th 69
Proceedings of the Assembly.

To George Washington, December 20th 71
R. H. Lee's letter—Objections in Virginia—Jay's opinions—Chances of ratification.

To Thomas Jefferson, December 20th 74
Morris's contract—Progress towards ratification—Old government expiring—Work on the Potomac—Virginia council.

PAGE

1788.

To Edmund Randolph, January 10th 79
Randolph's letter—Second convention—Motives of the opposition—S. Adams's views—Progress of ratification.

To George Washington, January 14th 84
Progress of ratification.

To George Washington, January 20th 85
Arrival of Count de Moustier—Foreign news—Opposition in Massachusetts—Congress has quorum.

To Edmund Randolph, January 20th 86
Jones's transfer—Arrival of Count de Moustier—Opposition in Massachusetts.

To George Washington, January 25th 88
Randolph's letter—Information from Boston.

To George Washington, January 28th 92
Information from Massachusetts.

To George Washington, February 94
Progress in Massachusetts—Prospects in South Carolina.

To George Washington, February 3d 95
Progress in Massachusetts.

To George Washington, February 8th 97
Progress in Massachusetts—Prospects in other States.

To George Washington, February 11th 99
Progress in Massachusetts.

To George Washington, February 15th 100
Announces ratification in Massachusetts.

To Thomas Jefferson, February 19th 100
Thanks for watch—Progress towards ratification—Opposition in Virginia—Henry's position.

To George Washington, February 20th 104
Will stand for Virginia Convention—News from Europe.

PAGE

To Edmund Pendleton, February 21st 107
Continuance of the Union the question—Opposition to ratification—News from Europe.

To Edmund Pendleton, March 3d 110
Prospects in New Hampshire and New York.

To George Washington, March 3d 111
Prospects in New Hampshire—Will set out for Orange.

To Edmund Randolph, March 3d 113
Prospects in New Hampshire—New York—Colonel Heth's arrival.

To George Washington, April 10th 114
Prospects in Virginia Convention—Maryland and South Carolina.

To Edmund Randolph, April 10th 117
Amendments of Massachusetts—Money system—Coalition of all Federalists urged.

To Thomas Jefferson, April 22d 120
Prospects in Virginia—Henry's and Mason's opposition.

To George Washington, June 4th . . . . 123, n.
Proceedings of convention.

Speeches in the Virginia Convention, June 5th to 24th . 123–234

June 5, Necessity for the Constitution—June 7, Power to Lay Taxes—June 11, Power to Lay Taxes—June 12, Power to Lay Taxes—June 12, Power to Lay Taxes, Jefferson's Views, Religious Freedom, Treaty-making Power—June 13, Mississippi Negotiations—June 14, Election of Senators and Representatives—June 14, Compensation of Congress—June 14, Compensation of Congress—June 14, Originating of Money Bills—June 14, Power over Purse and Sword—June 14, Power over Elections—June 16, Power over the Militia—June 16, Power over the Militia—June 16, Power over Seat of Government—June 16, Power over Seat of Government—June 17, Importation of Slaves—June 17, Importation of Slaves—June 17, The Vice-Presidency—June 18, Election of President—June 18, Treaty-making Power—June 20, Power of Judiciary—June 24, Necessity for Ratification

PAGE

To George Washington, June 13th . . . 179, n.
Proceedings of convention.

To George Washington, June 18th . . . 211, n.
Proceedings of convention.

To James Madison, June 20th . . . . 216, n.
Proceedings of convention.

To George Washington, June 23d . . . . 225, n.
Proceedings of convention.

To Ambrose Madison, June 24th . . . . 227, n.
Proceedings of convention.

To George Washington, June 25th . . . 227, n.
Proceedings of convention.

To George Washington, June 27th 234
Encloses Virginia ratification—Henry's attitude.

To Edmund Randolph, July 2d 235
Jefferson's views on the Constitution—Contest for the capital.

To Edmund Randolph, July 16th 236
New York Convention—Congress.

To George Washington, July 21st 237
New York Convention—Congress.

To Edmund Randolph, July 22d 239
New York's ratification.

To Thomas Jefferson, July 24th 240
Proceedings of Virginia Convention—Henry's opposition—Prospects of State conventions—Has received the seeds—New York's ratification—Crops in Virginia.

To Thomas Jefferson, August 10th 244
Proposed amendments to the Constitution—North Carolina and Rhode Island—Contest for the capital—Concerning the *Federalist*—Mazzei's affairs.

To Edmund Randolph, August 11th 246
Contest for the capital.

To George Washington, August 15th 248
Contest for the capital—Circular letter from New York Convention.

PAGE

To James Madison, August 18th 250
Triplet's affairs—John and Anthony—North Carolina and Rhode Island—Contest for the capital—Price of the negro boy.

To Edmund Pendleton, August 22d 251
Clinton's circular—Feeling towards the Constitution—Contest for the capital.

To Thomas Jefferson, August 23d 253
North Carolina—Unfavorable prospects—Contest for the capital.

To George Washington, August 24th 256
Effect of New York letter—Contest for the capital—Objections to New York.

To James Madison, September 6th 259
Prospect for amendments—Runaway slave—Loan-office certificates.

To Edmund Pendleton, September 14th 260
Arrangements for new government—Contest for the capital—The meeting at Harrisburg—Mazzei's book.

To Thomas Jefferson, September 21st 262
Negotiations with Spain—New York circular—Project of second convention—Contest for the capital—Pamphlet on Mohegan language—Allowance for outfit—Crops in Virginia.

To Philip Mazzei, October 8th 267
Reasons for agreeing to the Constitution—Mission to Holland or Italy—Mazzei's book.

To Thomas Jefferson, October 17th 269
Concerning outfit—Personnel of new government—Proposed amendments—Bill of rights—Proceedings in Kentucky.

To Edmund Randolph, October 17th 275
Mazzei's affairs—Affairs in France—Prefers to stand for House of Representatives.

To Edmund Pendleton, October 20th 277
"Balmy" Mississippi resolutions—Opposition to New York as capital—Concerning amendments—Events in France.

PAGE

To George Washington, October 21st 279
Events in France—Count Moustier sets out for Mt. Vernon—Opposition to New York as capital.

Questions from and Answers to Count de Moustier, October 30th 281
Trade and commerce of Virginia.

Observations on the "Draught of a Constitution for Virginia" 284

To Edmund Randolph, November 2d 295
Henry's opposition—Legislative service.

To G. L. Turberville, November 2d 297
Project of second convention.

To George Washington, November 5th 301
Asks opinion on purchase of land—Political prospects.

To Edmund Randolph, November 23d 303
Elections to Senate expected—Prospects for the House—Future plans.

To Henry Lee, November 30th 306
Land purchase—Amendments to Constitution—Elections to Congress.

To Thomas Jefferson, December 8th 309
Prospects of new government—Question of amendments—Moustier's conduct—Jefferson's private finances—Coming election in Virginia.

To Philip Mazzei, December 10th 314
Mazzei's book—His views on the Constitution—Ratification.

To James Madison, December 18th 317
Personal movements.

1789.

To George Washington, January 14th 318
Elections in Virginia.

To George Eve, January 2d . . . . . 319, n.
Views on amendments to Constitution.

PAGE

To Henry Lee, January 321
Remarks on situation of Great Falls of Potomac.

To James Madison, February 24th. 324
Personal movements.

To Edmund Randolph, March 1st 325
Concerning his election.

To George Washington, March 5th 327
Elections for President.

To George Washington, March 8th 328
Complexion of Congress—Affairs in Kentucky—George Morgan's project.

To George Washington, March 19th 329
Quorum expected in Congress—Political news—Affairs in France.

To George Washington, March 26th 331
George Morgan's project—No quorum yet.

To Thomas Jefferson, March 29th 333
Elections to new government—Contest with Monroe—No quorum yet—Adams to be Vice-President—Hopes for amendments to Constitution—Jefferson's movements—Morgan's project—Elections in New York and New Jersey.

To George Washington, April 6th 338
Proceedings of Congress.

Speeches in the First Congress, First Session . . 339–425
April 9, 21, May 9, 12, 14, Duties on Imports—May 11, Titles—May 19, June 16, 17, 18, 22, Power of Removal—May 22, Citizenship of the United States—June 8, August 13, Amendments to the Constitution—June 29, Duties of the Comptroller—September 3, 18, 28, Location of Capital.

To Edmund Randolph, April 12th . . . . 346, n
Amendments to Constitution—British debts.

To Thomas Jefferson, May 9th . . . . . 355, n.
Discriminating duties—Titles.

To Edmund Pendleton, May 19th . . . . 361, n.
Revenue system.

PAGE

To Thomas Jefferson, May 23d . . . . . 369, n.
Titles—Moustier.

To Thomas Jefferson, May 27th . . . . . 370, n.
New departments and their heads—Appointment for Jefferson—Bill for duties—Amendments—Kentucky to be a State—Spirit of Congress.

To Edmund Randolph, May 31st . . . . . 372, n.
Proceedings of Congress.

To Edmund Randolph, June 21st . . . . . 405, n.
Removals from office.

To Samuel Johnston, June 21st . . . . . 409, n.
President's illness—Amendments to Constitution.

To Edmund Pendleton, July 15th . . . . 414, n
Judiciary bill—Power of removals.

To James Monroe, August 9th . . . . . 415, n.
Discriminating duties—Compensation bill.

To Archibald Stuart, August 12th . . . . 417, n.
Power of removal—Compensation bill.

To Edmund Randolph, August 21st . . . . 417, n.
Amendments—Judiciary bill—Asks copy of Randolph's speech in the convention.

To Alexander White, August 24th . . . . 419, n.
Amendments—Capital.

To Edmund Pendleton, September 14th . . 420, n.
Amendments—Judiciary bill—Capital.

To Edmund Pendleton, September 23d . . 424, n.
Amendments—Judiciary bill—Capital.

To George Washington, November 20th . . . 425
Trade down the Mississippi—Location of capital—Proceedings of Assembly.

To George Washington, December 5th 429
Lee's letter—Proceedings of Assembly—Fate of the amendments.

Memorandum, December 433
Agent at London—Discriminating duties—Jefferson's movements.

1790.

PAGE

To Thomas Jefferson, January 24th 434
Arrival of busts—Plans for militia and revenue—Jefferson's appointment—Affairs in France.

Speeches in the First Congress, Second Session . 436–461
February 3, Naturalization—February 11, 18, Public Debt—February 24, Assumption of State Debts.

To Thomas Jefferson, February 4th . . . 437, n.
Can one generation bind another?

To James Madison, February 27th . . . 460, n.
Family affairs—Proceedings of Congress.

THE WRITINGS OF

JAMES MADISON.

TO EDMUND PENDLETON. MAD. MSS.

PHILAD^{A}, Sepr 20 1787

DEAR SIR The privilege of franking having ceased with the Convention, I have waited for this opportunity of inclosing you a copy of the proposed Constitution for the U. States. I forbear to make any observations on it; either on the side of its merits or its faults. The best Judges of both will be those who can combine with a knowledge of the collective & permanent interest of America, a freedom from the bias resulting from a participation in the work. If the plan proposed be worthy of adoption, the degree of unanimity attained in the Convention is a circumstance as fortunate, as the very respectable dissent on the part of Virginia is a subject of regret. The double object of blending a proper stability & energy in the Government with the essential characters of the republican Form, and of tracing a proper line of demarkation between the national and State authorities, was necessarily found to be as difficult as it was desirable, and to admit of an infinite

diversity concerning the means among those who were unanimously agreed concerning the end.

I find by a letter from my father that he & my uncle Erasmus have lately paid their respects to Edmundsbury. I infer from his silence as to your health that no unfavorable change had happened in it. That this may find it perfectly re-established is the sincere and affect^e wish of, Dr Sir,

Y^r friend & humble Servt

TO JAMES MADISON. MAD. MSS.

NEW YORK, Septr 30 1787

HON^D SIR By Mr. Blair, who left Philad^a immediately after the rising of the Convention, I sent to the care of Mr. F. Maury a copy of the new Constitution proposed for the U. S. Mr. Blair set out in such haste that I had no time to write by him, and I thought the omission of the less consequence as your last letter led me to suppose that you must about that time be absent on your trip to Frederick. I arrived here on monday last.[1] The Act of the Conven-

[1] Edward Carrington wrote to Madison from New York, where he was a delegate in Congress from Virginia, under date September 23, 1787:—"The Gentlemen who have arrived from the Convention inform us that you are on the way to join us—least, however, you may, under a supposition that the State of the delegation is such as to admit of your absence, indulge yourself in leisurely movements, after the fatiguing time you have had, I take this precaution to apprize you that the same scism which unfortunately happened in our State in Philadelphia, threatens us here also—one of our Colleagues Mr R. H. Lee is forming propositions for essential alterations in the Constitution, which will, in effect, be to oppose it.—Another, Mr Grayson, dislikes it, and is, at best for giving it only a Silent passage to the States.

tion was then before Congress. It has been since taken up, & by a unanimous vote forwarded to the States to be proceeded on as recommended by the Convention. What reception this new system will generally meet with cannot yet be pronounced. For obvious reasons opposition is as likely to arise in Virginia as anywhere. The City of Philad[a] has warmly espoused it. Both parties there it is said have united on the occasion. It may happen nevertheless that a country party may spring up and give a preponderancy to the opposite scale. In this City the general voice coincides with that of Philad[a], but there is less apparent unanimity, and it is pretty certain that the party in power will be active in defeating the new System. In Boston the reception given to it is extremely favorable we are told, but more will depend on the Country than the Town. The echo from

M[r] H. Lee joins me in opinion that it ought to be warmly recommended to ensure its adoption—a lukewarmness in Congress will be made a ground of opposition by the unfriendly in the States—those who have hitherto wished to bring the conduct of Congress into contempt, will in this case be ready to declare it truly respectable.

"Next Wednesday is fixed for taking under consideration this business, and I ardently wish you could be with us.

"The New York faction is rather active in spreading the seads of opposition—this, however, has been expected, and will not make an impression so injurious as the same circumstances would in some other States. Col[o] Hamilton has boldly taken his ground in the public papers, and, having truth and propriety, on his side, it is to be hoped he will stem the torrent of folly and iniquity.

"I do not implicitly accede, in sentiment, to every article of the scheme proposed by the convention, but I see not how my utmost wishes are to be gratified until I can withdraw from Society—so long as I find it necessary to combine my strength and interests with others, I must be satisfied to make some sacrifices to the general accommodation."—*Mad. MSS.*

Connecticut & New Jersey, as far as it has reached us, denotes a favorable disposition in those States.

I inclose a few Plumb-Stones from an excellent Tree. I am aware that this is not the true mode of propagating the fruit, but it sometimes succeeds, and sometimes even improves the fruit. With my affect^e^ regards to my mother & the family

I remain Y^r^ dutif^l^ Son.

TO GEORGE WASHINGTON. WASH. MSS.

N. York, Sepr 30 1787.

Dear Sir,—I found on my arrival here that certain ideas unfavorable to the Act of the Convention which had created difficulties in that body, had made their way into Congress. They were patronised chiefly by Mr. R. H. L[ee,] and Mr. Dane of Mass^ts^. It was first urged that, as the new Constitution was more than an alteration of the Articles of Confederation under which Congress acted, and even subverted those Articles altogether, there was a constitutional impropriety in their taking any positive agency in the work. The answer given was that the Resolution of Congress in Feby had recommended the Convention as the best mean of obtaining a firm *national Government;* that, as the powers of the Convention were defined by their Commissions in nearly the same terms with the powers of Congress given by the Confederation on the subject of alterations, Congress were not more restrained from acceding to the new

plan, than the Convention were from proposing it. If the plan was within the powers of the Convention it was within those of Congress; if beyond those powers, the same necessity which justified the Convention would justify Congress; and a failure of Congress to Concur in what was done would imply either that the Convention had done wrong in exceeding their powers, or that the Government proposed was in itself liable to insuperable objections; that such an inference would be the more natural, as Congress had never scrupled to recommend measures foreign to their constitutional functions, whenever the public good seemed to require it; and had in several instances, particularly in the establishment of the new Western Governments, exercised assumed powers of a very high & delicate nature, under motives infinitely less urgent than the present state of our affairs, if any faith were due to the representations made by Congress themselves, echoed by 12 States in the Union, and confirmed by the general voice of the people. An attempt was made in the next place by R. H. L. to amend the Act of the Convention before it should go forth from Congress.[1] He proposed a bill of Rights,—provision for juries in civil cases, & several other things corresponding with the ideas of Colonel M[ason.] He was supported by Mr. M[elancthon] Smith of this state. It was contended that Congress had an undoubted right to

[1] Lee was so far successful in his efforts against the Constitution that he was able to boast that there was "a bare transmission of the Convention plan, without a syllable of approbation, or disapprobation on the part of Congress."—Hunt's *Life of Madison*, 168.

insert amendments, and that it was their duty to make use of it in a case where the essential guards of liberty had been omitted. On the other side the right of Congress was not denied, but the inexpediency of exerting it was urged on the following grounds;—1. that every circumstance indicated that the introduction of Congress as a party to the reform was intended by the States merely as a matter of form and respect. 2. that it was evident, from the contradictory objections which had been expressed by the different members who had animadverted on the plan, that a discussion of its merits would consume much time, without producing agreement even among its adversaries. 3. that it was clearly the intention of the States that the plan to be proposed should be the act of the Convention, with the assent of Congress, which could not be the case, if alterations were made, the Convention being no longer in existence to adopt them. 4. that as the Act of the Convention, when altered would instantly become the mere act of Congress, and must be proposed by them as such, and of course be addressed to the Legislatures, not Conventions of the States, and require the ratification of thirteen instead of nine States, and as the unaltered act would go forth to the States directly from the Convention under the auspices of that Body,—Some States might ratify the one & some the other of the plans, and confusion & disappointment be the least evils that would ensue. These difficulties which at one time threatened a serious division in Cong[s] and popular alterations

with the yeas and nays on the Journals, were at length fortunately terminated by the following Resolution: "Congress having rec^{d} the Report of the Convention lately assembled in Philad^{a}, Resol^{d} *unanimously* that the said Report, with the Resolutions & letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates chosen in each State by the people thereof, in conformity to the Resolves of the Convention made & provided in that case." Eleven States were present, the absent ones, R. I. & Maryland. A more direct approbation would have been of advantage in this & some other States, where stress will be laid on the agency of Congress in the matter, and a handle be taken by adversaries of any ambiguity on the subject. With regard to Virginia & some other States, reserve on the part of Congress will do no injury. The circumstance of unanimity must be favorable every where.

The general voice of this City seems to espouse the new Constitution. It is supposed nevertheless that the party in power is strongly opposed to it. The country must finally decide, the sense of which is as yet wholly unknown. As far as Boston & Connecticut have been heard from, the first impression seems to be auspicious. I am waiting with anxiety for the echo from Virginia, but with very faint hopes of its corresponding with my wishes.[1]

[1] September 30, 1787, from Bowling Green, Edmund Randolph wrote that there was much friendship in Baltimore for the Constitution, and that Bladensburg and Alexandria approved it.—*Chicago Hist. Soc. MSS.*

With every sentiment of respect & esteem, & every wish for your health & happiness, I am Dear Sir

Your Obedient, humble Servt

P. S. A small packet of the size 2 Vol 8° addressed to you lately came to my hands with books of my own from France. Genl Pinkney has been so good as to take charge of them. He set out yesterday for S. Carolina, & means to call at Mount Vernon.

TO EDMUND RANDOLPH.[1]

NEW YORK, October 7, 1787.

DEAR SIR,—

. . . . . .

We hear nothing decisive as yet concerning the general reception given to the act of the Convention. The advocates for it come forward more promptly than the adversaries. The sea coast seems every where fond of it. The party in Boston which was thought most likely to make opposition, are warm in espousing it. It is said that Mr. S. Adams objects to one point only, viz. the prohibition of a religious test. Mr. Bowdoin's objections are said to be against the great number of members composing the Legislature, and the intricate election of the Presi-

[1] From *The Madison Papers* (1840).

Edmund Pendleton wrote Madison October 8, 1787, describing Randolph and George Mason as deserters from the Constitution (*Chicago Hist. Soc. MSS.*); but it was not really known whether Randolph was for or against the Constitution till a later period, when he came out as one of its warmest advocates. Washington wrote Madison October 10: "From circumstances, which have been related, it is conjectured that the Governor [Randolph] wishes he had been among the subscribing members."—(Ford's *Writings of Washington*, xi., 170.)

dent. You will no doubt have heard of the fermentation in the Assembly of Pennsylvania.[1]

. . . . . .

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Oct. 14, 1787.

DEAR SIR,—The letter herewith inclosed was put into my hands yesterday by Mr. de Crevecœur who belongs to the Consular establishment of France in this Country. I add to it a pamphlet[2] which Mr. Pinkney has submitted to the public, or rather as he professes, to the perusal of his friends, and a printed sheet[3] containing his ideas on a very delicate subject,

[1] September 28 the Pennsylvania House of Assembly took up the question of calling a convention to consider the Constitution, as recommended by the Constitutional Convention. Considerable opposition developed, and finally, in order to prevent the question being carried, the opponents absented themselves and broke a quorum. On the following day two of the absentees were forcibly brought into the House, thus making a quorum, and the House ordered the calling of the convention. The proceedings and debate are humorous reading. See McMaster and Stone's *Pennsylvania and The Federal Constitution*, Chapter ii., p. 27.

[2] "Observations on the Plan of Government submitted to the Federal Convention in Philadelphia, on the 28th of May, 1787. By the Hon. Charles Pinckney, Esq., L.L.D. Delegate from the State of South Carolina. Delivered at different Times in the course of their Discussions. New York:—Printed by Francis Child."—P. L. Ford's *Pamphlets on the Constitution*, 419.

[3] Pinckney's speech on the Mississippi question delivered in Congress in secret session. See Madison's letter to Jefferson, Oct. 24, and to Washington, Oct. 28, *post*. "Mr. C. Pinckney is unwilling, . . . to lose any fame that can be acquired by the publication of his sentiments. If the subject of the navigation of the Mississippi could have remained as silent, and glided as gently down the stream of time for a while, as the waters do that are contained within the banks, it would, I confess, have comported more with my ideas of sound policy, than any decision that can be come to at this day."—Washington to Madison Oct. 22, 1787, Ford's *Writings of Washington*, xi., 175.

too delicate in my opinion to have been properly confided to the press. He conceives that his precautions against any further circulation of the piece than he himself authorizes, are so effectual as to justify the step. I wish he may not be disappointed. In communicating a copy to you, I fulfil his wishes only.

No decisive indications of the public mind in the North[n] & Middle States can yet be collected. The Reports continue to be rather favorable to the Act of the Convention from every quarter; but its adversaries will naturally be latest in shewing themselves. Boston is certainly friendly. An opposition is known to be in petto in Connecticut, but it is said not to be much dreaded by the other side. Rhode Island will be divided on this subject in the same manner that it has been on the question of paper money. The Newspapers here have contained sundry publications animadverting on the proposed Constitution & it is known that the Government party are hostile to it. There are on the other side so many able & weighty advocates, and the conduct of the Eastern States if favorable, will add so much force to their arguments, that there is at least as much ground for hope as for apprehension. I do not learn that any opposition is likely to be made in N. Jersey. The temper of Pennsylvania will be best known to you from the direct information which you cannot fail to receive through the Newspapers & other channels.

Congress have been of late employed chiefly in settling the requisition, and in making some arrangements for the Western Country. The latter consist

of the appointment of a Govr & Secretary, and the allotment of a sum of money for Indian Treaties, if they should be found necessary. The Requisition so far as it varies our fiscal system, makes the proportion of indents receivable independently of specie, & those of different years indiscriminately receivable for any year, and does not as heretofore tie down the States to a particular mode of obtaining them. Mr. Adams has been permitted to return home after Feby next, & Mr. Jefferson's appointment continued for three years longer.

With the most perfect esteem & most affectionate regard, I remain Dr Sir,

Your Obed^t friend & serv^t.

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Octr 18, 1787.

DEAR SIR,—I have been this day honored with your favor of the 10th instant, under the same cover with which is a copy of Col. Mason's objections to the Work of the Convention.[1] As he persists in the temper which produced his dissent it is no small satisfaction to find him reduced to such distress for a proper gloss on it; for no other consideration surely could have led him to dwell on an objection

[1] See Washington's letter in Ford's *Writings of Washington*, xi., 168. Mason sent Washington a copy in his own hand of his "Objections to the Constitution of Government formed by the Convention." (Wash. MSS.) It was afterward printed in a folio broadside. The draft and printed copy may be seen in Kate Mason Rowland's *George Mason*, ii., Appendix. See also P. L. Ford's *Pamphlets on the Constitution*, 326, and Elliot's *Debates*, i., 494.

which he acknowledged to have been in some degree removed by the Convention themselves—on the paltry right of the Senate to propose alterations in money bills—on the appointment of the vice President President of the Senate instead of making the President of the Senate the vice President, which seemed to be the alternative—and on the *possibility*, that Congress may misconstrue their powers & betray their trust so far as to grant monopolies in trade &c—. If I do not forget too some of his other reasons were either not at all or very faintly urged at the time when alone they ought to have been urged, such as the power of the Senate in the case of treaties & of impeachments; and their duration in office. With respect to the latter point I recollect well that he more than once disclaimed opposition to it. My memory fails me also if he did not acquiesce in if not vote for, the term allowed for the further importation of slaves,[1] and the prohibition of duties on exports by the States. What he means by the dangerous tendency of the Judiciary I am at some loss to comprehend. It was never intended, nor can it be supposed that in ordinary cases the inferior tribunals will not have final jurisdiction in order to prevent the evils of which he complains. The great mass of suits in every State lie between Citizen & Citizen, and relate to matters not of federal cog-

[1] This is hardly fair to Mason. The strongest speech delivered against slavery and the slave trade in the constitutional convention was his (*ante*, vol. iv., 266), and he voted with Madison against extending the permissive period for importing slaves. (*ante*, iv., 303, 305.)

nizance. Notwithstanding the stress laid on the necessity of a Council to the President I strongly suspect, tho' I was a friend to the thing, that if such an one as Col. Mason proposed, had been established, and the power of the Senate in appointments to offices transferred to it, that as great a clamour would have been heard from some quarters which in general echo his objections. What can he mean by saying that the Common law is not secured by the new Constitution, though it has been adopted by the State Constitutions. The common law is nothing more than the unwritten law, and is left by all constitutions equally liable to legislative alterations. I am not sure that any notice is particularly taken of it in the Constitutions of the States. If there is, nothing more is provided than a general declaration that it shall continue along with other branches of law to be in force till legally changed. The Constitution of Virg[a] drawn up by Col Mason himself, is absolutely silent on the subject. An *ordinance* passed during the same Session, declared the common law as heretofore & all Statutes of prior date to the 4 of James I to be still the law of the land, merely to obviate pretexts that the separation from G. Britain threw us into a State of nature, and abolished all civil rights and objections. Since the Revolution every State has made great inroads & with great propriety in many instances on this *monarchical* code. The "revisal of the laws" by a Comittee of w[ch] Col. Mason was a member, though not an acting one, abounds with such innovations. The abolition of

the *right of primogeniture*, which I am sure Col. Mason does not disapprove, falls under this head. What could the Convention have done? If they had in general terms declared the Common law to be in force, they would have broken in upon the legal Code of every State in the most material points; they w^d^ have done more, they would have brought over from G. B. a thousand heterogeneous & antirepublican doctrines, and even the *ecclesiastical Hierarchy itself*, for that is a part of the Common law. If they had undertaken a discrimination, they would have formed a digest of laws, instead of a Constitution. This objection surely was not brought forward in the Convention, or it w^d^ have been placed in such a light that a repetition of it out of doors would scarcely have been hazarded. Were it allowed the weight which Col. M. may suppose it deserves, it would remain to be decided whether it be candid to arraign the Convention for omissions which were never suggested to them—or prudent to vindicate the dissent by reasons which either were not previously thought of, or must have been wilfully concealed. But I am running into a comment as prolix as it is out of place.

I find by a letter from the Chancellor (Mr. Pendleton) that he views the act of the Convention in its true light, and gives it his unequivocal approbation. His support will have great effect. The accounts we have here of some other respectable characters vary considerably. Much will depend on Mr. Henry, and I [am] glad to find by your letter that his favorable

decision on the subject may yet be hoped for.[1]—The Newspapers here begin to teem with vehement & violent calumniations of the proposed Gov^t. As they are chiefly borrowed from the Pensylvania papers, you see them of course. The reports however from different quarters continue to be rather flattering.

With the highest respect & sincerest attachment I remain Dear Sir, Y^r Obed^t & Affect^e Servt

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

NEW YORK, October 21, 1787.

MY DEAR FRIEND

I mentioned in a late letter that I had addressed to your care a small box of books for the University. I now enclose the Bill of lading. I enclosed also a bill of lading for another box destined for Mr. W. Hay. Will you be so good as to have it handed to him? I paid two dollars for its freight from France to this port, which he may repay to you. The money you remitted by me to Col. Carrington having somewhat exceeded the amount of his demand, the two dollars may the more properly pass into your hands.

I have received no letter from you since your halt at the Bolling Green. We hear that opinions are various in Virginia on the plan of the Convention. I have received, within a few days, a letter from the Chancellor, by which I find that he gives it his

[1] Henry wrote Washington, Oct. 19th, that he was not in accord with the constitution, but that "perhaps mature reflection" might produce a change in his sentiments. (Ford's *Writings of Washington*, xi., 165, n.) He soon became the leader of the opponents of the constitution.

approbation; and another from the President of William and Mary, which, though it does not absolutely reject the Constitution, criticises it pretty freely. The newspapers in the Northern and Middle States begin to teem with controversial publications. The attacks seem to be principally levelled against the organization of the Government, and the omission of the provisions contended for in favor of the press, and juries, &c. A new combatant, however, with considerable address and plausibility, strikes at the foundation. He represents the situation of the United States to be such as to render any government improper and impracticable which forms the States into one nation, and is to operate directly on the people. Judging from the newspapers, one would suppose that the adversaries were the most numerous and the most earnest. But there is no other evidence that it is the fact. On the contrary, we learn that the Assembly of New Hampshire, which received the Constitution on the point of their adjournment, were extremely pleased with it. All the information from Massachusetts denotes a favorable impression there. The Legislature of Connecticut have unanimously recommended the choice of a Convention in that State, and Mr. Baldwin, who is just from the spot, informs me, that, from present appearances, the opposition will be inconsiderable; that the Assembly, if it depended on them, would adopt the system almost unanimously; and that the clergy and all the literary men are exerting themselves in its favor. Rhode Island is divided; the

majority being violently against it. The temper of this State cannot yet be fully discerned. A strong party is in favor of it. But they will probably be outnumbered, if those whose numbers are not yet known should take the opposite side. New Jersey appears to be zealous. Meetings of the people in different counties are declaring their approbation, and instructing their representatives. There will probably be a strong opposition in Pennsylvania. The other side, however, continue to be sanguine. Doctor Carroll, who came hither lately from Maryland, tells me, that the public voice there appears at present to be decidedly in favor of the Constitution. Notwithstanding all these circumstances, I am far from considering the public mind as fully known, or finally settled on the subject. They amount only to a strong presumption that the general sentiment in the Eastern and Middle States is friendly to the proposed system at this time.

Present me respectfully to Mrs. R. and accept the most fervent wishes for your happiness, from your affect. friend.

TO THOMAS JEFFERSON.[1] LIB. OF CONG. MSS.

NEW YORK, Oct[r] 24, 1787.

DEAR SIR,—

. . . . . .

Your favor of June 20 has been already acknowledged. The last Packet from France brought me

[1] Jefferson's reply to this letter is dated Dec. 20 1787, and contains his objections to the Constitution.—P. L. Ford's *Writings of Jefferson*, iv., 473.

that of August 2d. I have recd also by the *Mary* Capt. Howland the three Boxes for W. H.,[1] B.F.[2] and myself. The two first have been duly forwarded. The contents of the last are a valuable addition to former literary remittances and lay me under additional obligations, which I shall always feel more strongly than I express. The articles for Congress have been delivered & those for the two Universities [3] and for General Washington have been forwarded, as have been the various letters for your friends in Virginia and elsewhere. The parcel of rice referred to in your letter to the Delegates of S. Carolina has met with some accident. No account whatever can be gathered concerning it. It probably was not shipped from France. Ubbo's book I find was not omitted as you seem to have apprehended. The charge for it however is, which I must beg you to supply. The duplicate vol of the Encyclopedie, I left in Virginia, and it is uncertain when I shall have an opportunity of returning it. Your Spanish duplicates will I fear be hardly vendible. I shall make a trial whenever a chance presents itself. A few days ago I recd your favor of 15 of Augst via L'Orient & Boston. The letters inclosed along with it were immediately sent to Virga.

You will herewith receive the result of the Con-

[1] William Hay in Richmond.

[2] Benjamin Franklin.

[3] "In the box of books are some for the colleges of Philadelphia & Williamsburg & two vols of the Encyclopedie for Congress, presented by the author of that part."—Jefferson to Madison, Aug. 2, 1787, P. L. Ford's *Writings of Jefferson*, iv., 423.

vention, which continued its session till the 17th of September. I take the liberty of making some observations on the subject, which will help to make up a letter, if they should answer no other purpose.

It appeared to be the sincere and unanimous wish of the Convention to cherish and preserve the Union of the States. No proposition was made, no suggestion was thrown out, in favor of a partition of the Empire into two or more Confederacies.

It was generally agreed that the objects of the Union could not be secured by any system founded on the principle of a confederation of Sovereign States. A *voluntary* observance of the federal law by all the members could never be hoped for. A *compulsive* one could evidently never be reduced to practice, and if it could, involved equal calamities to the innocent & the guilty, the necessity of a military force both obnoxious & dangerous, and in general a scene resembling much more a civil war than the administration of a regular Government.

Hence was embraced the alternative of a Government which instead of operating, on the States, should operate without their intervention on the individuals composing them; and hence the change in the principle and proportion of representation.

This ground-work being laid, the great objects which presented themselves were 1. to unite a proper energy in the Executive, and a proper stability in the Legislative departments, with the essential characters of Republican Government. 2. to draw a line of demarkation which would give to the

General Government every power requisite for general purposes, and leave to the States every power which might be most beneficially administered by them. 3. to provide for the different interests of different parts of the Union. 4. to adjust the clashing pretensions of the large and small States. Each of these objects was pregnant with difficulties. The whole of them together formed a task more difficult than can be well conceived by those who were not concerned in the execution of it. Adding to these considerations the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle.

The first of these objects, as respects the Executive, was peculiarly embarrassing. On the question whether it should consist of a single person, or a plurality of co-ordinate members, on the mode of appointment, on the duration in office, on the degree of power, on the re-eligibility, tedious and reiterated discussions took place. The plurality of co-ordinate members had finally but few advocates. Governour Randolph was at the head of them. The modes of appointment proposed were various, as by the people at large—by electors chosen by the people —by the Executives of the States—by the Congress, some preferring a joint ballot of the two Houses —some a separate concurrent ballot, allowing to each a negative on the other house—some, a nomination of several candidates by one House, out of whom a choice should be made by the other. Several other

modifications were started. The expedient at length adopted seemed to give pretty general satisfaction to the members. As to the duration in office, a few would have preferred a tenure during good behaviour —a considerable number would have done so in case an easy & effectual removal by impeachment could be settled. It was much agitated whether a long term, seven years for example, with a subsequent & perpetual ineligibility, or a short term with a capacity to be re-elected, should be fixed. In favor of the first opinion were urged the danger of a gradual degeneracy of re-elections from time to time, into first a life and then a hereditary tenure, and the favorable effect of an incapacity to be reappointed on the independent exercise of the Executive authority. On the other side it was contended that the prospect of necessary degradation would discourage the most dignified characters from aspiring to the office, would take away the principal motive to ye faithful discharge of its duties—the hope of being rewarded with a reappointment would stimulate ambition to violent efforts for holding over the Constitutional term—and instead of producing an independent administration, and a firmer defence of the constitutional rights of the department, would render the officer more indifferent to the importance of a place which he would soon be obliged to quit forever, and more ready to yield to the encroachm^ts^ of the Legislature of which he might again be a member. The questions concerning the degree of power turned chiefly on the appointment to offices, and the controul on the

Legislature. An *absolute* appointment to all offices —to some offices—to no offices, formed the scale of opinions on the first point. On the second, some contended for an absolute negative, as the only possible mean of reducing to practice the theory of a free Government which forbids a mixture of the Legislative & Executive powers. Others would be content with a revisionary power, to be overruled by three fourths of both Houses. It was warmly urged that the judiciary department should be associated in the revision. The idea of some was that a separate revision should be given to the two departments—that if either objected two thirds, if both, three fourths, should be necessary to overrule.

In forming the Senate, the great anchor of the Government the questions, as they came within the first object, turned mostly on the mode of appointment, and the duration of it. The different modes proposed were 1. by the House of Representatives. 2. by the Executive. 3. by electors chosen by the people for the purpose. 4. by the State Legislatures.— On the point of duration, the propositions descended from good behavior to four years, through the intermediate terms of nine, seven, six, & five years. The election of the other branch was first determined to be triennial, and afterwards reduced to biennial.

The second object, the due partition of power between the General & local Governments, was perhaps of all, the most nice and difficult. A few contended for an entire abolition of the States; Some for indefinite power of Legislation in the Congress, with a

negative on the laws of the States; some for such a power without a negative; some for a limited power of legislation, with such a negative; the majority finally for a limited power without the negative. The question with regard to the negative underwent repeated discussions, and was finally rejected by a bare majority. As I formerly intimated to you my opinion in favor of this ingredient, I will take this occasion of explaining myself on the subject. Such a check on the States appears to me necessary 1. to prevent encroachments on the General authority. 2. to prevent instability and injustice in the legislation of the States.

1. Without such a check in the whole over the parts, our system involves the evil of imperia in imperio. If a compleat supremacy somewhere is not necessary in every Society, a controuling power at least is so, by which the general authority may be defended against encroachments of the subordinate authorities, and by which the latter may be restrained from encroachments on each other. If the supremacy of the British Parliament is not necessary as has been contended, for the harmony of that Empire; it is evident I think that without the royal negative or some equivalent controul, the unity of the system would be destroyed. The want of some such provision seems to have been mortal to the antient Confederacies, and to be the disease of the modern. Of the Lycian confederacy little is known. That of the Amphyctions is well known to have been rendered of little use whilst it lasted, and in the end to have

been destroyed, by the predominance of the local over the federal authority. The same observation may be made, on the authority of Polybius, with regard to the Achæan League. The Helvetic System scarcely amounts to a confederacy, and is disguished by too many peculiarities, to be a ground of comparison. The case of the United Netherlands is in point. The authority of a Stadtholder, the influence of a Standing Army, the common interest in the conquered possessions, the pressure of surrounding danger, the guarantee of foreign powers, are not sufficient to secure the authority and interest of the generality agst the anti-federal tendency of the provincial sovereignties. The German Empire is another example. A Hereditary chief with vast independent resources of wealth and power, a federal Diet, with ample parchment authority, a regular Judiciary establishment, the influence of the neighbourhood of great & formidable Nations have been found unable either to maintain the subordination of the members, or to prevent their mutual contests & encroachments. Still more to the purpose is our own experience both during the war and since the peace. Encroachments of the States on the general authority, sacrifices of national to local interests, interferences of the measures of different States, form a great part of the history of our political system. It may be said that the new Constitution is founded on different principles, and will have a different operation. I admit the difference to be material. It presents the aspect rather of a feudal system of

republics, if such a phrase may be used, than of a Confederacy of independent States. And what has been the progress and event of the feudal Constitutions? In all of them a continual struggle between the head and the inferior members, until a final victory has been gained in some instances by one, in others, by the other of them. In one respect indeed there is a remarkable variance between the two cases. In the feudal system the sovereign, though limited, was independent; and having no particular sympathy of interests with the Great Barons, his ambition had as full play as theirs in the mutual projects of usurpation. In the American Constitution The general authority will be derived entirely from the subordinate authorities. The Senate will represent the States in their political capacity; the other House will represent the people of the States in their individual capacity. The former will be accountable to their constituents at moderate, the latter at short periods. The President also derives his appointment from the States, and is periodically accountable to them. This dependence of the General on the local authorities, seems effectually to guard the latter against any dangerous encroachments of the former; whilst the latter, within their respective limits, will be continually sensible of the abridgement of their power, and be stimulated by ambition to resume the surrendered portion of it. We find the representatives of Counties and Corporations in the Legislatures of the States, much more disposed to sacrifice the aggregate interest, and even

authority, to the local views of their constituents, than the latter to the former. I mean not by these remarks to insinuate that an esprit de corps will not exist in the National Government or that opportunities may not occur of extending its jurisdiction in some points. I mean only that the danger of encroachments is much greater from the other side, and that the impossibility of dividing powers of legislation, in such a manner, as to be free from different constructions by different interests, or even from ambiguity in the judgment of the impartial, requires some such expedient as I contend for. Many illustrations might be given of this impossibility. How long has it taken to fix, and how imperfectly is yet fixed the legislative power of corporations, though that power is subordinate in the most compleat manner? The line of distinction between the power of regulating trade and that of drawing revenue from it, which was once considered the barrier of our liberties, was found on fair discussion, to be absolutely undefinable. No distinction seems to be more obvious than that between spiritual and temporal matters. Yet wherever they have been made objects of Legislation, they have clashed and contended with each other, till one or the other has gained the supremacy. Even the boundaries between the Executive, Legislative, & Judiciary powers, though in general so strongly marked in themselves, consist in many instances of mere shades of difference. It may be said that the Judicial authority, under our new system will keep the States within their proper limits, and supply the

place of a negative on their laws. The answer is, that it is more convenient to prevent the passage of a law than to declare it void after it is passed; that this will be particularly the case, where the law aggrieves individuals, who may be unable to support an appeal ag^st^ a State to the supreme Judiciary; that a State which would violate the Legislative rights of the Union, would not be very ready to obey a Judicial decree in support of them, and that a recurrence to force, which, in the event of disobedience would be necessary, is an evil which the new Constitution meant to exclude as far as possible.

2. A constitutional negative on the laws of the States seems equally necessary to secure individuals ag^st^ encroachments on their rights. The mutability of the laws of the States is found to be a serious evil. The injustice of them has been so frequent and so flagrant as to alarm the most stedfast friends of Republicanism. I am persuaded I do not err in saying that the evils issuing from these sources contributed more to that uneasiness which produced the Convention, and prepared the Public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects. A reform therefore which does not make provision for private rights, must be materially defective. The restraints ag^st^ paper emissions, and violations of contracts are not sufficient. Supposing them to be effectual as far as they go, they are short of the mark. Injustice may be effected by such an infinitude of legislative

expedients, that where the disposition exists it can only be controuled by some provision which reaches all cases whatsoever. The partial provision made, supposes the disposition which will evade it. It may be asked how private rights will be more secure under the Guardianship of the General Government than under the State Governments, since they are both founded on the republican principle which refers the ultimate decision to the will of the majority, and are distinguished rather by the extent within which they will operate, than by any material difference in their structure. A full discussion of this question would, if I mistake not, unfold the true Principles of Republican Government, and prove in contradiction to the concurrent opinions of the theoretical writers, that this form of Government, in order to effect its purposes, must operate not within a small but an extensive sphere. I will state some of the ideas which have occurred to me on the subject. Those who contend for a simple Democracy, or a pure republic, actuated by the sense of the majority, and operating within narrow limits, assume or suppose a case which is altogether fictitious. They found their reasoning on the idea, that the people composing the Society, enjoy not only an equality of political rights; but that they have all precisely the same interests, and the same feelings in every respect. Were this in reality the case, their reasoning would be conclusive. The interest of the majority would be that of the minority also; the decisions could only turn on mere opinion concerning the good of the whole, of which

the major voice would be the safest criterion; and within a small sphere, this voice could be most easily collected, and the public affairs most accurately managed. We know however that no society ever did or can consist of so homogeneous a mass of Citizens. In the savage state indeed, an approach is made towards it; but in that state little or no Government is necessary. In all civilized societies, distinctions are various and unavoidable. A distinction of property results from that very protection which a free Government gives to unequal faculties of acquiring it. There will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest. These classes may again be subdivided according to the different productions of different situations & soils, & according to different branches of commerce and of manufactures. In addition to these natural distinctions, artificial ones will be founded, on accidental differences in political, religious, or other opinions, or an attachment to the persons of leading individuals. However erroneous or ridiculous these grounds of dissention and faction may appear to the enlightened Statesman or the benevolent philosopher, the bulk of mankind who are neither Statesmen nor Philosophers, will continue to view them in a different light. It remains then to be enquired whether a majority having any common interest, or feeling any common passion, will find sufficient motives to restrain them from oppressing the minority. An individual is never allowed to be a judge or even a witness,

in his own cause. If two individuals are under the bias of interest or enmity agst a third, the rights of the latter could never be safely referred to the majority of the three. Will two thousand individuals be less apt to oppress one thousand, or two hundred thousand one hundred thousand? Three motives only can restrain in such cases: 1. a prudent regard to private or partial good, as essentially involved in the general and permanent good of the Whole. This ought no doubt to be sufficient of itself. Experience however shews that it has little effect on individuals, and perhaps still less on a collection of individuals, and least of all on a majority with the public authority in their hands. If the former are ready to forget that honesty is the best policy; the last do more. They often proceed on the converse of the maxim, that whatever is politic is honest. 2. respect for character. This motive is not found sufficient to restrain individuals from injustice. And loses its efficacy in proportion to the number which is to divide the pain or the blame. Besides as it has reference to public opinion, which is that of the majority, the standard is fixed by those whose conduct is to be measured by it. 3. Religion. The inefficacy of this restraint on individuals is well known. The conduct of every popular Assembly, acting on oath, the strongest of religious ties, shews that individuals join without remorse in acts agst which their consciences would revolt, if proposed to them separately in their closets. When Indeed Religion is kindled into enthusiasm, its force like that of other passions is

increased by the sympathy of a multitude. But enthusiasm is only a temporary state of Religion, and whilst it lasts will hardly be seen with pleasure at the helm. Even in its coolest state, it has been much oftener a motive to oppression than a restraint from it. If then there must be different interests and parties in society; and a majority when united by a common interest or passion cannot be restrained from oppressing the minority, what remedy can be found in a republican Government, where the majority must ultimately decide, but that of giving such an extent to its sphere, that no common interest or passion will be likely to unite a majority of the whole number in an unjust pursuit. In a large Society, the people are broken into so many interests and parties, that a common sentiment is less likely to be felt, and the requisite concert less likely to be formed, by a majority of the whole. The same security seems requisite for the civil as for the religious rights of individuals. If the same sect form a majority and have the power, other sects will be sure to be depressed. Divide et impera, the reprobated axiom of tyranny, is under certain qualifications, the only policy, by which a republic can be administered on just principles. It must be observed however that this doctrine can only hold within a sphere of a mean extent. As in too small a sphere oppressive combinations may be too easily formed agst the weaker party; so in too extensive a one, a defensive concert may be rendered too difficult against the oppression of those entrusted with the administration. The

great desideratum in Government is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society to controul one part from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the entire Society. In absolute monarchies, the Prince may be tolerably neutral towards different classes of his subjects but may sacrifice the happiness of all to his personal ambition or avarice. In small republics, the sovereign will is controuled from such a sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. In the extended Republic of the United States. The General Government would hold a pretty even balance between the parties of particular States, and be at the same time sufficiently restrained by its dependence on the community, from betraying its general interests.

Begging pardon for this immoderate digression I return to the third object above mentioned, the adjustments of the different interests of different parts of the Continent. Some contended for an unlimited power over trade including exports as well as imports, and over slaves as well as other imports; some for such a power, provided the concurrence of two thirds of both Houses were required; Some for such a qualification of the power, with an exemption of exports and slaves, others for an exemption of exports only. The result is seen in the Constitution. S. Carolina & Georgia were inflexible on the point of the slaves.

The remaining object created more embarrassment, and a greater alarm for the issue of the Convention than all the rest put together. The little States insisted on retaining their equality in both branches, unless a compleat abolition of the State Governments should take place; and made an equality in the Senate a sine qua non. The large States on the other hand urged that as the new Government was to be drawn principally from the people immediately and was to operate directly on them, not on the States; and consequently as the States w^d^ lose that importance which is now proportioned to the importance of their voluntary compliances with the requisitions of Congress, it was necessary that the representation in both Houses should be in proportion to their size. It ended in the compromise which you will see, but very much to the dissatisfaction of several members from the large States.

It will not escape you that three names only from Virginia are subscribed to the Act. Mr. Wythe did not return after the death of his lady. Doc^r^ M'Clurg left the Convention some time before the adjournment. The Governour and Col. Mason refused to be parties to it. Mr. Gerry was the only other member who refused. The objections of the Govr turn principally on the latitude of the general powers, and on the connection established between the President and the Senate. He wished that the plan should be proposed to the States with liberty to them to suggest alterations which should all be referred to another general Convention, to be incorporated into the plan

as far as might be judged expedient. He was not inveterate in his opposition, and grounded his refusal to subscribe pretty much on his unwillingness to commit himself, so as not to be at liberty to be governed by further lights on the subject. Col. Mason left Philad[a] in an exceeding ill humour indeed. A number of little circumstances arising in part from the impatience which prevailed towards the close of the business, conspired to whet his acrimony. He returned to Virginia with a fixed disposition to prevent the adoption of the plan if possible. He considers the want of a Bill of Rights as a fatal objection. His other objections are to the substitution of the Senate in place of an Executive Council & to the powers vested in that body—to the powers of the Judiciary—to the vice President being made President of the Senate—to the smallness of the number of Representatives—to the restriction on the States with regard to ex post facto laws—and most of all probably to the power of regulating trade, by a majority only of each House. He has some other lesser objections. Being now under the necessity of justifying his refusal to sign, he will of course muster every possible one. His conduct has given great umbrage to the County of Fairfax, and particularly to the Town of Alexandria. He is already instructed to promote in the Assembly the calling of a Convention, and will probably be either not deputed to the Convention, or be tied up by express instructions. He did not object in general to the powers vested in the National Government, so much as to the modification. In some respects he

admitted that some further powers would have improved the system. He acknowledged in particular that a negative on the State laws, and the appointment of the State Executive ought to be ingredients; but supposed that the public mind would not now bear them, and that experience would hereafter produce these amendments.

The final reception which will be given by the people at large to the proposed system cannot yet be decided. The Legislature of N. Hampshire was sitting when it reached that State and was well pleased with it. As far as the sense of the people there has been expressed, it is generally favorable. Boston is warm and almost unanimous in embracing it. The impression on the country is not yet known. No symptoms of disapprobation have appeared. The Legislature of that State is now sitting, through which the sense of the people at large will soon be promulged with tolerable certainty. The paper money faction in R. Island is hostile. The other party zealously attached to it. Its passage through Connecticut is likely to be very smooth and easy. There seems to be less agitation in this State N. York than anywhere. The discussion of the subject seems confined to the Newspapers. The principal characters are known to be friendly. The Governour's party which has hitherto been the popular & most numerous one, is supposed to be on the opposite side; but considerable reserve is practiced, of which he sets the example. N. Jersey takes the affirmative side of course. Meetings of the people are declaring their approbation and

instructing their representatives. Penn[a] will be divided. The City of Philad[a], the Republican party, the Quakers, and most of the Germans espouse the Constitution. Some of the Constitutional leaders, backed by the Western Country will oppose. An unlucky ferment on the subject in their Assembly just before its late adjournment has irritated both sides, particularly the opposition, and by redoubling the exertions of that party may render the event doubtful. The voice of Maryland I understand from pretty good authority, is, as far as it has been declared, strongly in favor of the Constitution. Mr. Chase is an enemy, but the Town of Baltimore which he now represents, is warmly attached to it, and will shackle him as far as it can. Mr. Paca will probably be, as usual, in the politics of Chase. My information from Virginia is as yet extremely imperfect. I have a letter from Gen[l] Washington which speaks favorably of the impression within a circle of some extent; and another from Chancellor Pendleton which expresses his full acceptance of the plan, and the popularity of it in his district, I am told also that Innes and Marshall are patrons of it. In the opposite scale are Mr. James Mercer, Mr. R. H. Lee, Doc[r] Lee and their connections of course, Mr. M. Page according to Report, and most of the Judges & Bar of the general Court. The part which Mr. Henry will take is unknown here. Much will depend on it. I had taken it for granted from a variety of circumstances that he w[d] be in the opposition, and still think that will be the case. There are reports however which favor a

contrary supposition. From the States South of Virginia nothing has been heard. As the deputation from S. Carolina consisted of some of its weightiest characters, who have returned unanimously zealous in favor of the Constitution, it is probable that State will readily embrace it. It is not less probable that N. Carolina will follow the example unless that of Virginia should counterbalance it. Upon the whole, although, the public mind will not be fully known, nor finally settled, for a considerable time, appearances at present augur a more prompt, and general adoption of the plan than could have been well expected.

When the plan came before Congress for their sanction, a very serious effort was made by R. H. Lee & Mr. Dane, from Mass^{ts} to embarrass it. It was first contended that Congress could not properly give any positive countenance to a measure which had for its object the subversion of the Constitution under which they acted. This ground of attack failing, the former gentleman urged the expediency of sending out the plan with amendments, & proposed a number of them corresponding with the objections of Col. Mason. This experiment had still less effect. In order however to obtain unanimity it was necessary to couch the resolution in very moderate terms.

Mr. Adams has rec^{d} permission to return, with thanks for his services. No provision is made for supplying his place, or keeping up any representation there. Your reappointment for three years will be notified from the office of F. Aff^{rs}. It was *made* [1]

[1] Italics for cypher.

without a negative, eight States being *present. Connecticut, notwithstanding put in a blank ticket,* the *sense of* that *State having been declared against embassies. Massachus*ts *betrayed some scruple* on *like ground.* Every *personal consideration* was *avowed,* & *I believe with sincerity,* to have *militated against these scruples.* It seems to be understood that letters to & from the foreign Ministers of the U. S. are not free of Postage; but that the charge is to be allowed in their accounts.

The exchange of our French for Dutch Creditors has not been countenanced either by Congress or the Treasury Board. The paragraph in your last letter to Mr. Jay, on the subject of applying a loan in Holland to the discharge of the pay due to the foreign officers has been referred to the Board since my arrival here. No report has yet been made. But I have little idea that the proposition will be adopted. Such is the state & prospect of our fiscal department, that any new loan however small, that should now be made, would probably subject us to the reproach of premeditated deception. The balance of Mr. Adams's last loan will be wanted for the interest due in Holland, and with all the income here, will it is feared, not save our credit in Europe from farther wounds. It may well be doubted whether the present Government can be kept alive during the ensuing year, or until the new one may take its place.

Upwards of 100,000 Acres of the lands of the U. S. have been disposed of in open market. Five millions of unsurveyed have been sold by private contract to

a N. England company, at ⅔ of a dollar per Acre, payment to be made in the principal of the public securities. A negotiation is nearly closed with a N. Jersey company for two millions more on like terms, and another commenced with a company of this City for four millions. Col. Carrington writes more fully on this subject.

You will receive herewith the desired information from Alderman Broome in the case of Mr. Burke, also the Virg[a] Bill on Crimes & punishments. Sundry alterations having been made in conformity to the sense of the House in its latter stages, it is less accurate & methodical than it ought to have been. To these papers I add a Speech of Mr. C. P. on the Missippi business. It is printed under precautions of secrecy, but surely could not have been properly exposed to so much risk of publication.[1] You will find also among the pamphlets & papers I send by Comodore Jones, another printed speech of the same Gentleman. The Museum [?], Magazine, & Philad[a] Gazettes will give you a tolerable idea of the objects of present attention.

The summer crops in the Eastern & Middle States have been extremely plentiful. Southward of Virg[a] —They differ in different places. On the whole I do not know that they are bad in that region. In Virginia the drought has been unprecedented, particularly between the falls of the Rivers & the Mountains. The crops of Corn are in general alarmingly short. In Orange I find there will be scarcely sub-

[1] See *ante* p. 9.

sistence for the inhabitants. I have not heard from Albemarle. The crops of Tob° are every where said to be pretty good in point of quantity, & the quality unusually fine. The crops of wheat were also in general excellent in quality & tolerable in quantity.

Novr 1. Commodore Paul Jones having preferred another vessel to the packet, has remained here till this time. The interval has produced little necessary to be added to the above. The Legislature of Mass^ts has it seems taken up the act of the Convention, and has appointed or probably will appoint an early day for its State Convention. There are letters also from Georgia which denote a favorable disposition. I am informed from Richmond that the New Election-law from the Revised Code produced a pretty full House of Delegates, as well as a Senate, on the first day. It had previously had equal effect in producing full meetings of the freeholders for the County elections. A very decided majority of the Assembly is said to be zealous in favor of the New Constitution. The same is said of the Country at large. It appears however that individuals of great weight both within & without the Legislature are opposed to it. A letter I just have from Mr. A. Stuart,[1] names Mr. Henry,

[1] Archibald Stuart's letter is dated October 21: "From the disposition of some of ye members I fear it will be difficult to execute that Business [calling the convention] without entering into ye merits of ye Constitution itself—

"Mr Henry has upon all occasions however foreign his subject attempted to give the Constitution a side blow its friends are equally warm in its support & never fail to pursue him through all his windings. From what I can learn ye body of the people approve ye proposed plan of government, it has however no contemptible opposition. Our two

Gen! Nelson, W. Nelson, the family of Cabels, St George Tucker, John Taylor, and the Judges of the Gen! Court except P. Carrington. The other opponents he describes as of too little note to be mentioned, which gives a negative information of the Characters on the other side. All are agreed that the plan must be submitted to a Convention.

We hear from Georgia that that State is threatened with a dangerous war with the Creek Indians. The alarm is of so serious a nature that law-martial has been proclaimed, and they are proceeding to fortify even the Town of Savannah. The idea there is, that the Indians derive their motives as well as their means from their Spanish neighbours. Individuals complain also that their fugitive slaves are encouraged by East Florida. The policy of this is explained by supposing that it is considered as a discouragement to the Georgians to form settlements near the Spanish boundaries.

There are but few States on the spot here which will survive the expiration of the federal year, and it is extremely uncertain when a Congress will again be formed. We have not yet heard who are to be in the appointment of Virginia for the next year

With the most affectionate attachment I remain Dear Sir

dissenting members in ye Convention P. H^{y}, ye family of Cabells, St Geo. Tucker, J. Taylor, Mr Nelson, Gen! Nelson, Mr Ronald. I fear ye Judges I am to except P Carrington & others to tedious & at the same time too insignificant to mention."—*Mad. MSS.*

the sincerest desire that it may be disregarded if it cannot be fulfilled with the most perfect convenience.

With sentiments of the most perfect esteem & the most Affect^{e} regard I remain Dear Sir, your Obed^{t} friend & hbl^{e} Servt

The British Packet has arrived but I do not learn that any news comes by her. Her passage has been a tedious one.

TO EDMUND PENDLETON. MAD. MSS.

NEW YORK, Octr 28, 1787.

DEAR SIR,—I have rec^{d} and acknowledge with great pleasure your favor of the 8th inst: The remarks which you make on the Act of the Convention appear to me to be in general extremely well founded. Your criticism on the clause exempting vessels bound to or from a State from being obliged to enter &c., in another is particularly so. This provision was dictated by the jealousy of some particular States, and was inserted pretty late in the Session. The object of it was what you conjectured. The expression is certainly not accurate. Is not a religious test as far as it is necessary, or would operate, involved in the oath itself? If the person swearing believes in the Supreme Being who is invoked, and in the Penal consequences of offending him, either in this or a future world or both, he will be under the same restraint from perjury as if he had previously subscribed a test requiring this belief. If the person in question be an unbeliever in these points and would, notwithstanding take the oath, a previous test could

had arrived here from different quarters, concerning the proposed Constitution. I recollect nothing that is now to be added farther than that the Assembly of Massachusetts now sitting certainly gives it a friendly reception. I inclose a Boston paper by which it appears that Governour Hancock has ushered it to them in as propitious a manner as could have been required.

Mr. C. P.'s[1] character is as you observe well marked by the publications which I inclosed. His printing the secret paper at this time could have no motive but the appetite for expected praise; for the subject to which it relates has been dormant a considerable time, and seems likely to remain so.

A foreign gentleman of merit, and who, besides this general title, brings me a letter which gives him a particular claim to my civilities, is very anxious to obtain a sketch of the Potomac and the route from the highest navigable part of it to the western waters which are to be connected with the potomac by the portage, together with a sketch of the works which are going on, and a memorandum of the progress made in them. Knowing of no other channel through which I could enable myself to gratify this gentleman, I am seduced into the liberty of resorting to your kindness; and of requesting that if you have such a draught by you, your amanuensis may be permitted to take a *very rough copy* of it for me. In making this request I beseech you Sir to understand that I do it with not more confidence in your goodness than with

[1] See *ante* p. 9.

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have no effect. He would subscribe it as he would take the oath, without any principle that could be affected by either.

I find, by a letter from Mr. Dawson [1] that the proposed Constitution is received by the Assembly with a more prompt & general approbation than could well have been expected. The example of Virginia will have great weight, and the more so, as the disagreement of the deputation will give it more the appearance of being the unbiassed expression of the public mind. It would be truly mortifying if anything should occur to prevent or retard the concurrence of a State which has generally taken the lead on great occasions. And it would be the more so in this case as it is generally believed that nine of the States at least will embrace the plan, and consequently that the tardy remainder must be reduced to the dilemma of either shifting for themselves, or coming in without any credit for it. There is reason to believe that the Eastern States, R. Island excepted, will be among the foremost in adopting the System. No particular information is yet received from N. Hampshire. The presumptive evidence of its good disposition however is satisfactory. The Legislature of Mass[ts] is now sitting, and letters from good authority say that everything goes well. Connecticut has unanimously called a Convention, and left no room to doubt her favorable disposition. This State has long had the character of being anti-federal. Whether she will

[1] Jonathan Dawson, a member of the Assembly. His letter is dated Oct. 19, and is to the same effect as Stuart's (*ante*, p. 40 n.)—*Mad. MSS.*

purge herself of it on this occasion, or not, is yet to be ascertained. Most of the respectable characters are zealous on the right side. The party in power is suspected on good grounds to be on the wrong one. N. Jersey adopts eagerly the Constitution. Penn[a] is considerably divided [1]; but the majority are as yet clearly with the Convention. I have no very late information from Maryland. The reports are that the opposition will make no great figure.[2] Not a word has been heard from the States South of Virginia, except from the lower parts of N. Carol[a], where the Constitution was well received. There can be little doubt I think that the three Southern States will go right unless the conduct of Virginia were to mislead them.

[1] Tench Coxe wrote from Philadelphia Oct. 21: "The opposition here has become more open. It is by those *leaders* of the constitutional interest, who have acted in concert with the Western interest. *The people* of the party in the city are chiefly fœderal, tho not so I fear in the Counties. However there is no doubt but that a majority, and a very respectable one in our Convention will adopt the Constitution *in toto*. The matter seems likely to be attended with a good deal of warmth in the conversations & publications, perhaps some abuse; but these things will arise on such great occasions."—*Mad. MSS.*

[2] Daniel Carroll wrote "near Geo:Town" Oct 28: "If the information I have received relating to this state [Maryland] can be depended on, every thing I hope will be right—M[r] Carroll [Charles of Carrollton] who waited for me, soon after saw M[r] Johnson, & sends me word that he is a warm friend—that Gentleman M[essrs] Lee & Potts were chosen the following week representatives with a view principally of preventing Mischief and forwarding this great object. M[r] Chase has I hear published a p[t] under the Signature of *Caution* which indicates an adverse dispos[n]. He has bound himself to propose a Convention, & if chosen by that Body will be bound to ratifye the proposed fœderal Govern[t], the impression in Baltimore being strong & general in favor of it."—*Mad. MSS.* Samuel Chase's letter appeared in *The Maryland Journal* Oct 12, 1787. See P. L. Ford's *Essays on The Constitution*, 327.

I enclose two of the last Newspapers of this place, to which I add one of Philadelphia, containing a report of a late important decision of the Supreme Court there. If the report be faithful, I suspect it will not give you a high idea of the chancery knowledge of the Chief Justice.

I am Dear Sir, with sincere affection,

Your Obed^{t} friend & serv^{t}.

TO ARCHIBALD STUART. VA. HIST. SOC. MSS.

N. Y. Oct. 30, 1787.

DEAR SIR,—I have been this day favored with yours of the 21st instant & beg you to accept my acknowledgements for it. I am truly sorry to find so many respectable names on your list of adversaries to the federal Constitution.[1] The diversity of opinion on so interesting a subject among men of equal integrity & discernment is at once a melancholy proof of the fallibility of the human judgement and of the imperfect progress yet made in the Science of govern-

[1] Among the opponents was Joseph Jones. He wrote to Madison from Richmond Oct. 29, 1787, that he saw many objections to the Constitution. The Senate was a legislative, executive and in some respects a judicial body, which was bad. The Senate and President could in some cases even legislate for the Union without the concurrence of the popular branch, and would prove an overmatch for the popular branch. There was strong objection to the appellate jurisdiction over law and fact of the Supreme Court. He should have been pleased to see a bill of rights. The advocates of the new plan were rather diminishing than increasing in number. Nov. 27, Jones wrote that he would receive the Constitution with reluctance.—*Chicago Hist. Soc. MSS.*

ment.[1] Nothing is more common here and I presume the case must be the same with you than to see companies of intelligent people equally divided, and equally earnest in maintaining on one side that the general government will overwhelm the state govern-

[1] James McClurg wrote to Madison from Richmond October 31:

"I am to thank you for the favor you did me in inclosing a copy of the new constitution; which has ever since been the principle topic of political conversation in every company. It was at first reciev'd with a prepossession in it's favor almost enthusiastic, in our towns especially. The circumstances, however, which in this state particr tended to excite suspicion & jealousy, have caused this disposition to subside sooner than it might otherwise have done; & every man's mind is turn'd to a subtle investigation of ye plan. Various indeed are the objections made to it; but those which strike only the most moderate & most federal, are confin'd chiefly to the Senate. Nor do they object to the equal representation of ye States in ye Senate, so much as to ye additional weight thrown into that branch of ye Legislature, by combining it with ye Presid^t^ in ye high executive offices of Government. It is supposed that ye obligation of a common Interest may connect them in a dangerous Junto; & on this account they imagine the Senate to be ye worst court that could have been contriv'd for the Impeachment of ye President. They conceive too that ye Senators, in their executive business, may become liable to Impeachment, tho' they cannot see by what court they can be tried.

"I see, in a pamphlet publish'd at Philad^a^ in defence of ye Constitution, a serious objection made to ye clause which empowers Congress to regulate the manner, time, & place, of chusing ye representatives of ye people in ye several States. This has been reechoed here; & it has not been easy to find a sufficient [reason] for it's insertion. Some have objected also to the Influence of the Presid^t^ in the house of representatives as capable of producing his reelection, even when the majority of ye constitutional electors are against him.

"These are objections made by men heartily dispos'd towards an energetic federal government, & conceiving y^t^ defects in its frame must be equally obnoxious to ye people of all ye States, they hope to see them amended. For my part, I am so fearful of it's Loss, that I should be willing to trust ye remedy of it's defects to ye reason moderation & experience of ye future Congress. By the by, what is to become of the State debts, when all ye Sources of revenue in ye States are seiz'd by Congress?"—*Mad. MSS.*

ments, and on the other hand that it will be a prey to their encroachments; on one side that the structure of the government is too firm & too strong, and on the other that it partakes too much of the weakness & instability of the Governments of the particular states. What is the proper conclusion from all this? That unanimity is not to be expected in any great political question. That the danger is probably exaggerated on each side, when an opposite danger is concerned on the opposite side, that if any constitution is to be established by deliberation & choice it must be examined with many allowances, and must be compared not with the theory, which each individual may frame in his own mind, but with the system which it is meant to take the place of; and with any other which there might be a possibility of obtaining.

I cannot judge so well as yourself of the propriety of mixing with an adoption of the Federal Constitution a revision of that of the State. If the latter could be effected without risks or inconveniency of the former, it is no doubt desirable.[1] The practicability of this will depend upon the unanimity with which it could be undertaken. I should doubt extremely whether the experiment could safely be made. Might not the blending of those two things together unite those who are unfriendly to either and thus strengthen the opposition you have to contend with? In case the general government should be established

[1] See *ante*, vol. ii., 54, n., for Madison's objections to the state constitution in his speech in the Assembly June, 1784. The constitution was not amended till 1829.

it will perhaps be easy to follow it with an amendment of our own Constitution. The example will have some influence by proving the practicability & safety of such experiments. And if the convention think fit they may lay a proper train of themselves for bringing the matter about.

The public mind in this quarter seems not finally settled as yet with regard to the proposed Constitution. The first impression has been every where favorable except in Rd. Island. Nor is there any reason to suspect that the generality of States will not embrace the measure.

The character of this State has long been antifederal & [it] is known that a very powerful party continue so. Penn[a] is also divided into parties but it is supposed that a majority will pretty certainly [be] on the right side.

With great respect & regard I am D[r] Sir

Y[r] ob[t] Serv[t]

TO AMBROSE MADISON.[1]

N. Y. PUB. LIB. MSS.

NEW YORK, Nov[r] 8th 1787

DEAR BROTHER,—Having mislaid your last favor, I cannot acknowledge it by reference to its date. It contained two requests, the one relating to M[r] House's rule of calculating the weight of Tobacco: the other to my being a candidate in Orange for the Convention.[2] In answer to the first point I inclose the rule

[1] A copy of this letter was printed in the *N. Y. Nation*, July 19, 1894.

[2] Archibald Stuart wrote to Madison, Richmond, Va., November 2: "Inclosed are y[e] Resolutions of Virginia on the subject of y[e] federal

exemplified. If this should not suffice, I will send you a calculation in detail for the whole account. In answer to the second point, I am to observe that it was not my wish to have followed the act of the general convention into the convention of the State; supposing that it would be as well that the final decision thereon should proceed from men who had no hand in preparing and proposing it. As I find however that in all the States the members of the Gen! Convention are becoming members of the State Conventions, as I have been applied to on the subject by sundry very respectable friends, as I have reason to believe that many objections in Virginia proceed

Government—It is generally considered necessary that you should be of the convention, not only that y Constitution may be adopted but with as much unanimity as possible.

"For God's sake do not disappoint the anxious expectations of y^{r} friends & let me add of y^{r} Country—The Govr on his return here was coolly received, upon which it is said he discov^{d} much anxiety, since ye opposition to ye Constitution has been heard of from Different parts of ye State he speaks with more confidence against what he calls ye objectionable parts—He is a candidate for ye convention, Wilkinson & Southall having cleared ye coast for him the former of whom is inimical to ye Gov^{t} proposed." . . .—*Mad. MSS.* The resolutions were passed October 31. Madison's copy is not among his papers, but the copy sent by George Mason to Washington is among the Washington MSS. and is as follows:

"In the House of Delegates, Thursday, the 25th of October, 1787.

"Resolved, *unanimously*, that the proceedings of the Federal Convention transmitted to the General Assembly through the medium of Congress, be submitted to a Convention of the people for their full and free investigation, discussion, and decision.

"Resolved, That every citizen being a freeholder in this commonwealth be eligible to a seat in the convention, and that the people therefore be not restrained in their choice of Delegates by any of those legal or constitutional restrictions which confine them in their choice of members of the Legislature.

"*Resolved*, That it be recommended to each county to elect two

from a misconception of the plan or of the causes which produced the objectionable parts of it, and as my attendance at Philadelphia may enable me to contribute some explanations and informations which may be of use, I shall not decline the representation of the County if I should be honored with the appointment. You may let this be known in such way as my father or yourself may judge best. I shall be glad to hear from you on the subject, and to know what competition there will probably be and by whom.

As far as present appearances denote, the N. England States R. Island excepted, will all adopt the new Constitution. N. Jersey certainly will. So will

Delegates, and to each city, town, or corporation entitled or which may be entitled by law to representation in the Legislature, to elect one Delegate to the said Convention.

"*Resolved*, That the qualifications of the Electors be the same with those now established by law, for the choice of representatives to the General Assembly.

"*Resolved*, That the elections for Delegates as aforesaid be held at the several places appointed by law for holding the elections for Delegates to the General Assembly, and that the same be conducted by the officers who conduct the Elections for Delegates, and conformably to the rules and regulations thereof.

"*Resolved*, That the election for Delegates be held in the month of *March* next, on the first day of the court to be held for each county, city, or corporation respectively, and that the persons so chosen shall assemble at the state-house in the city of Richmond on the first Monday in June next.

"Resolved, That two thousand copies of these resolutions be forthwith printed, and dispersed by the members of the General Assembly among their constituents, and that the Executive transmit a copy of them to Congress, and to the Legislatures and Executives of the respective states.

"Teste, JOHN BECKLEY, C.H.D.

1787, October 31st, Agreed to by the Senate,

"H. BROOKE, C.S."—*Wash. MSS.*

Penn[a] according to the best opinions, by a very decided majority. I have favorable information also from Maryland; though it is not improbable that the opposition likely to be made in Virginia will have some effect on that side, as well as on the side of N. Carolina, which in general has been said to be well disposed. Like information has been rec[d] from the two more Southern States; but it is too early to pronounce on their disposition. This State (N. York) is much divided. The party in power are willing to surrender any portion of it. The other party is composed of the more respectable citizens, and is warmly attached to the proposed constitution. Whatever may be the sense of the Majority the State will scarcely have a will of its own, if New England on one side and N. Jersey & Pen[a] on the other come heartily into the measure.[1] . . .

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Nov[r] 18, 1787.

DEAR SIR,—Your favor of the 5th instant found me in Philad[a], whither I had proceeded, under arrangements for proceeding to Virginia or returning to this place, as I might there decide. I did not acknowledge it in Philad[a], because I had nothing to communicate which you would not receive more fully and correctly from the Mr. Morrisis, who were setting out for Virginia.

All my informations from Richmond concur in

[1] The rest of the letter relates to foreign politics and is unimportant.

representing the enthusiasm in favor of the new Constitution as subsiding, and giving place to a spirit of criticism. I was fearful of such an event from the influence and co-operation of some of the adversaries. I do not learn however that the cause has lost its majority in the Legislature, and still less among the people at large.

I have nothing to add to the information heretofore given concerning the progress of the Constitution in other States. Mr. Gerry has presented his objections to the Legislature in a letter addressed to them,[1] and signified his readiness if desired, to give the particular reasons on which they were founded. The Legislature it seems decline the explanation, either from a supposition that they have nothing further to do in the business, having handed it over to the Convention, or from an unwillingness to countenance Mr. Gerry's conduct; or from both of these considerations. It is supposed that the promulgation of this letter will shake the confidence of some, and embolden the opposition of others in that State; but I cannot discover any ground for distrusting the prompt & decided concurrence of a large majority.

I inclose herewith the 7 first numbers of the federalist,[2] a paper addressed to the people of this State.

[1] See Elliot's *Debates*, i., 494.

[2] "Y^e^ Paper inclosed contained a piece signed *Publius* with which I am extremely pleased, from his introduction I have the highest expectations from him—If it would not impose too great a task upon you I would request that his subsequent papers may be sent to me, the N^os^ written by an American Citizen have had good effects & with some other pieces of merit have been printed in a small pamphlet for the information of the people."—Archibald Stuart to Madison, Nov. 9,

They relate entirely to the importance of the Union. If the whole plan should be executed, it will present to the public a full discussion of the merits of the proposed Constitution in all its relations. From the opinion I have formed of the views of a party in Virginia I am inclined to think that the observations on the first branch of the subject may not be superfluous antidotes in that State, any more than in this. If you concur with me, perhaps the papers may be put into the hands of some of your confidential correspondents at Richmond who would have them reprinted there. I will not conceal *from you* that I am likely to have such a *degree* of connection with the publication here as to afford a restraint of delicacy from interesting myself directly in the republication elsewhere. You will recognize one of the pens concerned in the task. There are three in the whole. A fourth may possibly bear a part.

1787. *Mad. MSS.* The first papers of the *Federalist* appeared over the signature "A Citizen of New York," but afterwards the pseudonym "Publius" was used. "An American Citizen" was the pseudonym of Tench Coxe. Rev. James Madison of William and Mary wrote to Madison that he was afraid the constitution of the Senate and Executive would lead to aristocracy and tyranny; but Feb. 9, 1788, he wrote that the papers of "Publius" had well nigh worked a conversion in him.—*Mad. MSS.* Of the 85 papers of the *Federalist* Madison wrote twenty-six, Nos. 10, 14, 18, 19, 20, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 62 and 63. It has been disputed, however, that he wrote more than fourteen by himself,—*i. e.*, Nos. 10, 14, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48, or had more than a joint authorship with Hamilton in Nos. 18, 19 and 20. (See Lodge's *Federalist*, introduction, and P. L. Ford in *The American Historical Review*, ii., 675.) The other numbers given above were, however, stated by Madison to be his (See *post*) and his right to be considered their author has been conclusively established by Professor Edward Gaylord Bourne in *The American Historical Review*, ii., 443, 682.

The intelligence by the packet as far as I have collected it, is contained in the gazette of yesterday.

Virginia is the only State represented as yet. When a Congress will be formed is altogether uncertain. It is not very improbable I think that the interregnum may continue throughout the winter.

With every sentiment of respect & attachment I remain dear Sir ye affect^e^ & hble Servant.

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

NEW YORK, November 18, 1787.

MY DEAR FRIEND,

1. I returned hither from Philadelphia to which place I had proceeded under arrangements for either going on to Virginia or coming back as I might there decide. Your very affectionate favor of the twenty-third ultimo found me in Philadelphia, after traveling to New York, and I should have answered before my return, had any matters for communication occurred worth the expense of postage. I did not make any observations on the scheme mentioned in your letter from the Bolling Green,[1] because it had an object which I thought it unadvisable to pursue; because I conceived that my opinion had been fully made known on the subject, and I wished not unnecessarily to repeat or dwell on points, on which

[1] Evidently in the letter referred to Randolph elaborated his scheme for holding a second constitutional convention to consider amendments to the proposed constitution.

our ideas do not accord; and because I considered part of your letter merely as a friendly communication, and a pleasing pledge of your confidence, and not as subject on which my ideas were wished. So much indeed was this the case, that at the time of answering that letter, I had not considered the expedient with sufficient accuracy, as a means of attaining the end proposed, to justify any opinion or remarks touching its fitness. The difficulty which struck me on a subsequent attention to it, and which seem insuperable was that several legislatures would necessarily have provided for a convention, and even adjourned before amendatory propositions from Virginia could be transmitted.

I have not since my arrival collected any additional information concerning the progress of the Federal Constitution. I discovered no evidence on my journey through New Jersey, that any opposition whatever would be made in that State. The Convention of Pennsylvania is to meet on Tuesday next. The members returned, I was told by several persons, reduced the adoption of the plan in that State to absolute certainty, and by a greater majority than the most sanguine advocates had calculated. One of the counties which had been set down by all on the list of opposition, had elected deputies of known attachment to the Constitution. I enclose herewith sundry letters which came by the French Packet just arrived. The letter from Col. H. Lewis, Mr. Jefferson tells me is of great consequence. You will have frequent opportunities during the assembly,

of giving it a safe conveyance. I have myself no public information by the packet, and have not yet learnt that any of moment has been received at the Office of Foreign Affairs. The intelligence passing in conversation is that the Porte has declared war against Russia, that notwithstanding the advance of the Prussian troops into Holland, it is not certain that an accommodation may not prevent actual hostilities, and that in general it remains doubtful whether war or peace in the western parts of Europe is to result from the present crisis of affairs. A great change has taken place again in the French ministry. The Count de la (Luzerne), brother of the Chavelier, succeeds the Marshall de Castries in the Department of Marine. The provincial assemblies are established, and some of them have already met. The Marquis de la Fayette is a leading member in that of Auvergne. The Parlemont has returned to Paris and it is supposed that the court will not enforce either the stamp duty or the territorial impost. The Count de Moustier is appointed to the U. States and may shortly be expected.

I do not find that a single State is represented except Virginia, and it seems very uncertain when a Congress will be made. There are individual members present from several States; and the attendance of this and the neighbouring States may, I suppose, be obtained when it will produce a quorum.

With the most sincere and invariable affection

I remain my dear friend

Yours

TO GEORGE WASHINGTON.

WASH. MSS.

N. YORK, Novr 20, 1787.

DEAR SIR,—My last inclosed the seven first numbers of the paper of which I gave you some account. I now add the seven following numbers, which close the first branch of the subject, the importance of the Union. The succeeding papers shall be forwarded from time to time as they come out.

The latest authentic information from Europe, he Dutch in a wretched situation. The will probably depend in the event on exter- tics for the degree of Security and power that e left them. The Turks & Russians have be- war in that quarter. And a general one is not obable.

have heard nothing of consequence lately con- ning the progress of the New Constitution.[1] The ennsylvania Convention has probably by this time ome to a decision; but it is not known here.

Not more than two or three States are yet convened. The prospect of a quorum during the winter continues precarious.

With every sentiment of respect & attachment, I remain, Dear Sir Y^r affect^e, humble serv^t.

[1] Caleb Wallace, a college-mate of Madison's, afterwards Judge of the Supreme Court of Kentucky, wrote to him from Fayette County, November 12, relative to the sentiment in that part of Virginia which afterwards became Kentucky:

"I have had an opportunity of conversing only with a few intelligent acquaintances on the merits of the American Constitution recommended by the late Federal Convention who seem to be well pleased therewith; and I wish it may be cordially embraced by every member of the Union."—*Mad. MSS.*

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

NEW YORK, December 2, 1787.

MY DEAR FRIEND [1]

. . . . . .

We have not more than two or three states attending. It is altogether conjectural when the deficiency of a quorum will be made up.

No recent indications of the views of the States as to the Constitution have come to my knowledge. The elections in Connecticut are over and, as far as the returns are known, a large majority are friendly to it. Doctr. Johnson says, it will be pretty certainly adopted, but there will be opposition. The power of taxing anything but imports appears to be the most popular topic among the adversaries. The Convention of Pennsylvania is sitting. The result there will not reach you first through my hands. The divisions on preparatory questions, as they are published in the newspapers, show that the party in favor of the Constitution have 44 or 45 vs. 22 or 24 or thereabouts.

The enclosed paper contains two numbers of the Federalist. This paper was begun about three weeks ago, and proposes to go through that subject. I have not been able to collect all the numbers, since my return from Philada, or I would have sent them to you. I have been the less anxious as I understand the printer means to make a pamphlet of them, when I can give them to you in a more con-

[1] The first two paragraphs of the letter give the news from Europe.

venient form. You will probably discover marks of different pens. I am not at liberty to give you any other key, than that I am in myself for a few numbers & that one besides myself was a member of the Convention.

I wish you all happiness and remain my dear sir

Yr affect friend

TO GEORGE WASHINGTON. MAD. MSS.

NEW YORK, Decem^r 7, 1787.

DEAR SIR,—My last inclosed a continuation of the Federalist to number 14 inclusive. I now add the numbers which have succeeded.

No authentic information has yet arrived concerning the posture of Europe. Reports, with some less doubtful symptoms, countenance the suspicions of war.

I understand that the Constitution will certainly be adopted in Connecticut; the returns of the deputies being now known, and a very great majority found to be its declared and firm friends. There will be more opposition in Massachusetts, but its friends there continue to be very sanguine of victory. New Hampshire, as far as I can learn, may be set down on the right list.

I remain Dear Sir, with the highest respect and the most unfeigned attachment Your obedient humble servant.

TO THOMAS JEFFERSON. MAD. MSS.

NEW YORK, Decr 9th, 1787.

DEAR SIR,—Your favor of the 17th of Sepr, with sundry other letters and packets, came duly by the last packet. Such of them as were addressed to others were duly forwarded. The three Boxes, marked I M. G. W. and A D. it appears, were never shipped from Havre. Whenever they arrive your commands with regard to the two last shall be attended to, as well as those relating to some of the contents of the first. I have not been able to get any satisfactory account of Willm S. Browne. Alderman Broom tells me that he professed to receive the money from him for the use of Mr. Burke. I shall not lose sight of the subject, and will give you the earliest information of the result of my enquiries. The annexed list of trees will shew you that I have ventured to substitute half a dozen sorts of apples in place of the pippins alone, and to add 8 other sorts of American trees, including twenty of the Sugar maple. They were obtained from a Mr. Prince in the neighborhood of this City, who deals largely in this way, and is considered as a man of worth. I learn from him that he has executed various commissions for Europe & the West Indies, as well as places less distant; and that he has been generally very successful in preserving the trees from perishing by such distant transplantations. He does not use moss as you prescribe but encloses the roots in a bag of earth. As moss is not to be got, as he says, it is uncertain whether necessity or choice gives the preference to

the latter. I inclose a catalogue of his nursery and annex the price of the sample I send you, that you may, if you incline, give orders for any other supply. I doubt whether the Virg[a] Red Birds are found in this part of America. Opossums are not rare in the milder parts of New Jersey, but are very rare this far Northward. I shall nevertheless avail myself of any opportunities which may happen for procuring and forwarding both. Along with the Box of trees I send by the Packet, to the care of Mr. Limosin, 2 Barrels of New-town pippins, and 2 of Cranberries. In one of the latter the Cranberries are put up dry in the other in water; the opinions and accounts differing as to the best mode. You will note the event of the experiment.

The Constitution proposed by the late Convention engrosses almost the whole political attention of America. All the Legislatures, except that of R. Island, which has assembled, have agreed in submitting it to State Conventions. Virginia has set the example of opening a door for amendments, if the Convention there should chuse to propose them. Maryland has copied it. The States which preceded, referred the Constitution as recommended by the Gen[l] Convention, to be ratified or rejected as it stands. The Convention of Pennsylvania, is now sitting. There are about 44 or 45 on the affirmative and about half that number on the opposite side. A considerable number of the Constitutional party as it was called, having joined the other party in espousing the Federal Constitution. The returns of deputies

for the Convention of Connecticut are known, and prove, as is said by those who know the men that a very great majority will adopt it in that State. The event in Massachusetts lies in greater uncertainty. The friends of the New Gov^t continue to eb sanguine. N. Hampshire from every account, as well as from some general inducements felt there will pretty certainly be on the affirmative side. So will new Jersey and Delaware. N. York is much divided. She will hardly dissent from N. England, particularly if the conduct of the latter should coincide with that of N. Jersey and Pennsylv^a. A more formidable opposition is likely to be made in Maryland than was at first conjectured. Mr. Mercer, it seems, who was a member of the Convention, though his attendance was but for a short time, is become an auxiliary to Chase. Johnson the Carrolls, Govr Lee, and most of the other characters of weight, are on the other side. Mr. T. Stone died a little before the Government was promulged. The body of the people in Virgin^a, particularly in the upper and lower Country, and in the Northern neck, are as far as I can gather, much disposed to adopt the New Constitution. The middle Country, and the South side of James River are principally in the opposition to it. As yet a large majority of the people are under the first description. As yet also are a majority of the Assembly. What change may be produced by the united influence and exertions of Mr. Henry, Mr. Mason, & the Governor,[1] with some pretty able aux-

[1] Edmund Randolph.

iliaries, is uncertain. My information leads me to suppose there must be three parties in Virginia. The first for adopting without attempting amendments. This includes Genl W and ye other deputies who signed the Constitution, Mr. Pendleton, (Mr. Marshall, I believe,) Mr. Nicholas, Mr. Corbin, Mr. Zach^{y} Johnson, Col. Innes, (Mr. B. Randolph as I understand) Mr. Harvey Mr. Gabriel Jones, Doc^{r} Jones, &c., &c. At the head of the 2^{d} party which urges amendments are the Govr & Mr. Mason. These do not object to the substance of the Govern^{t}, but contend for a few additional guards in favor of the Rights of the States and of the people. I am not able to enumerate the characters which fall in with their ideas, as distinguished from those of a third class, at the head of which is Mr. Henry. This class concurs at present with the patrons of Amendments, but will probably contend for such as strike at the essence of the System, and must lead to an adherence to the principle of the existing confederation, which most thinking men are convinced is a visionary one, or to a partition of the Union into several Confederacies. Mr. Harrison the late Govr, is with Mr. Henry. So are a number of others. The General and Admiralty Courts with most of the Bar, oppose the Constitution, but on what particular grounds I am unable to say. Genl Nelson, Mr. Jno page, Col. Bland, &c., are also opponents, but on what principle and to what extent I am equally at a loss to say. In general I must note, that I speak with respect to many of these names, from information that may not

be accurate, and merely as I should do in a free and confidential conversation with you. I have not yet heard Mr. Wythe's sentiments on the subject. Doc^{r} McClurg the other absent deputy, is a very strenuous defender of the new Government. Mr. Henry is the great adversary who will render the event precarious. He is I find with his usual address, working up every possible interest into a spirit of opposition. It is worthy of remark that whilst in Virg^{a}, and some of the other States in the middle & Southern Districts of the Union, the men of intelligence, patriotism, property, and independent circumstances, are thus divided, all of this description, with a few exceptions, in the Eastern States, & most of the Middle States, are zealously attached to the proposed Constitution. In N. England, the men of letters, the principal officers of Gov^{t}, the Judges & lawyers, the Clergy, and men of property, furnish only here and there an adversary. It is not less worthy of remark that in Virginia where the mass of the people have been so much accustomed to be guided by their rulers on all new and intricate questions, they should on the present which certainly surpasses the judgment of the greater part of them, not only go before, but contrary to their most popular leaders. And the phenomenon is the more wonderful, as a popular ground is taken by all the adversaries to the new Constitution. Perhaps the solution in both these cases would not be very difficult; but it would lead to observations too diffusive; and to you unnecessary. I will barely observe that the case in

Virg[a] seems to prove that the body of sober & steady people, even of the lower order, are tired of the vicissitudes, injustice, and follies, which have so much characterized public measures, and are impatient for some change which promises stability and repose. The proceedings of the present assembly are more likely to cherish than remove this disposition. I find Mr. Henry has carried a Resolution for *prohibiting* the importation of Rum, brandy, and other ardent spirits; and if I am not misinformed all manufactured leather, hats, and sundry other articles are included in the *prohibition*. Enormous duties at least are likely to take place on the last & many other articles. A project of this sort without the concurrence of the other States is little short of madness. With such concurrence, it is not practicable without resorting to expedients equally noxious to liberty and economy. The consequences of the experiment in a single State as unprepared for manufactures as Virginia may easily be preconceived. The Revised Code will not be resumed. Mr. Henry is an inveterate adversary to it. Col. Mason made a regular and powerful attack on the port Bill, but was left in a very small minority. I found at the last Session that that regulation was not to be shaken; though it certainly owes its success less to its principal merits, than to collateral & casual considerations. The popular ideas are that by favoring the collection of duties on imports it saves the solid property from direct taxes; and that it injures G. Britain by lessening the advantage she has over other Nations in the trade of Virginia.

We have no certain information from the three Southern States concerning the temper relative to the New Government. It is in general favorable according to the vague accounts we have. Opposition however will be made in each. Mr. Wiley Jones and Governor Caswell have been named as opponents in N. Carolina.

So few particulars have come to hand concerning the state of things in Georgia [1] that I have nothing to add on that subject, to the contents of my last by Commodore Jones.

We have two or three States only yet met for Cong^{s}. As many more can be called in when their attendance will make a quorum. It continues to be problematical whether the interregnum will not be spun out through the winter.

We remain in great uncertainty here with regard to a war in Europe. Reports and suspicions are strongly on the side of one. Such an event may be considered in various relations to this Country. It is pretty certain I think that if the present lax state of our General Government should continue, we shall not only lose certain capital advantages which might be drawn from it; but be in danger of being plunged into difficulties, which may have a very serious effect on our future fortunes.

I remain Dear Sir with the most sincere esteem & affection. Your Obed^{t} Servt.

[1] Tench Coxe wrote from Philadelphia Decr 28, 1787: "Our advices from Georgia rec^{d} on Thursday are very agreeable. From them I should not be surprised at an unanimous adoption there."—*Mad. MSS.*

P. S. I have delivered your message to Mr. Thomas & settled the pecuniary matter with him.

The letters which you put under the same cover, with the seals of one joining the superscription of the contiguous letter, come when the weather has been warm in such a state that it is often difficult to separate them without tearing out the superscription. A bit of paper between the adjoining letters over the seal would prevent this inconveniency.

No. 1—6 New Town Spitzenburg Apples 2—20. New Town pippins.... do 3—6. Esopus Spitzenburg.... do 4—6. Jersey Greening..... do 5—6 R. Island Greening..... do 6—6. Everlasting..... do	50 trees at 2*s*....	£5.	0. 0
7—10. American Plumbs.....	1*s* 6		15
8—8. Live Oaks.....	9*d*.....		6
9—20. Sugar Maples.....	2*s*	£	
10—10. Candle berry Myrtles.....	9*d*.....		7—6
11 6. Standard American Honey Suckles	1*s* 6		9
12 6. Three thorned Accacia.....	1*s* 6		9
13 6. Rhododendrons.....	2*s*		12
14 6. Dogwood Trees.....	1*s* 6		9
Box & Matts.....			5 6
Dollar at 8 shillg*s*		£10	— 13

TO GEORGE WASHINGTON.

MAD. MSS.

NEW YORK, Dec*r* 14, 1787.

DEAR SIR,—Along with this are inclosed a few copies of the latest Gazettes containing the additional papers in favor of the federal Constitution.

I find by letters from Richmond that the proceedings of the Assembly, are as usual, rapidly

degenerating with the progress of the session[1]; and particularly that the force opposed to the Act of the Convention has gained the ascendance. There is still nevertheless a hope left that different characters and a different spirit may prevail in their successors who are to make the final decision. In one point of view the present Assembly may perhaps be regarded as pleading most powerfully the cause of the new government, for it is impossible for stronger proofs to be found than in their conduct, of the necessity of some such anchor against the fluctuations which threaten to shipwreck our liberty.

I am dear Sir with the most sincere & perfect esteem. Your affect^e^ & obed^t^ humble servant.

[1] Archibald Stuart wrote from Richmond Dec. 2, 1787: "A Resolution was brought forward the day before yesterday for paying the members to Convention in June their Wages & securing to them Certain privileges &c. seconded by P. H. & Mason which after making Provision for ye purposes aforesaid goes farther & sais that should ye convention think proper to propose Amendments to ye Constitution this state will make provision for carrying the same into effect & that Money shall be advanced for ye support of Deputies to the Neighbouring States &c.—This many of us opposed as improper & proposed that the same provision should be made in General terms which should not discover the sense of the house on ye Subject but after a Long Debate the point was carried against us by a Majority of sixteen—In the Course of ye Debate P. H^y^ Observed that if this Idea was not held forth our southern neighbours might be driven to despair seeing no door open to safety should they disapprove the new Constitution—Mason on the subject was less candid than ever I knew him to be—from the above mentioned Vote there appears to be a Majority vs y^e^ [new] Gov^t^ as it now Stands & I fear since they have discovered their Strength they will adopt other measures tending to its prejudice from this circumstance I am happy to find most of ye States will have decided on ye question before Virginia for I now have my doubts whether She would afford them as usual a good Example."

Henry Lee wrote Dec. 7, 1787, from Stratford: "It is with real grief

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, DECEMBER 20, 1787.

DEAR SIR,—I was favored on Saturday with your letter of the 7th instant, along with which was covered the printed letter of Colonel R. H. Lee to the Governour.[1] It does not appear to me to be a very formidable attack on the new Constitution; unless it should derive an influence from the names of the correspondents, which its intrinsic merits do not entitle it to. He is certainly not perfectly accurate in

I inform you that by a late vote of the Assembly of Virg[a] on a collateral question, they have manifested hostility to the new constitution—Henry whose art is equal to his talents for declamation, conducted this business & gained a majority on the vote of sixteen.

"We are told by gentlemen from Richmond, that the whole district South of the James river are in the opposition—In this corner the people are warmly attached to the new system, but we are small in size, being only four or five countys.

"I saw Gen! Washington on my return, he continues firm as a rock, the Pages are all zealous abettors of the constitution so is R. Wormely & F. Lightfoot Lee—Both of these gentlemen are candidates for the convention—the last is an important acquisition & breaks the influence of the Stratford Lees—It becomes you to return in time to secure your election. If possible let me see you—I have offered myself for Westmoreland, but such is the number who contend for this distinction, it is not probable that I may succeed. God bless you."

From Rose Hill, Dec. 16, Lawrence Taliaferro wrote:

"I am sorry to inform you that the Federal system is deeply [?] slandered by some very able men in this State tho we have some very good & able men that are Friends of that & their Country & wish it to be adopted as speedily as Posable. . . . It is the sincere Wish & desire of myself & a Great many others that you will also represent the People of this County in the Spring Convention & we Earnestly beg that you will be here some time before the election . . . I dare say you will be greatly supp[d] to hear that it is report'd that you are opos[d] to the Sistem & I was told the other day that you were actually writing a peice against it."—*Mad. MSS.*

[1] See Elliot's *Debates*, i., 503.

the statement of all his facts; and I should infer from the tenor of the objections in Virginia that his plan of an Executive would hardly be viewed as an amendment of that of the Convention. It is a little singular that three of the most distinguished advocates for amendments; and who expect to unite the thirteen States in their project, appear to be pointedly at variance with each other on one of the capital articles of the System. Colonel Lee proposes that the President should chuse a Council of Eleven and with their advice have the appointment of all officers. Colonel Mason's proposition is that a Council of six should be appointed by the Congress. What degree of power he would confide to it I do not know. The idea of the Governour is that there should be a plurality of co-equal heads, distinguished probably by other peculiarities in the organization. It is pretty certain that some others who make a common cause with them in the general attempt to bring about alterations differ still more from them, than they do from each other; and that they themselves differ as much on some other great points as on the Constitution of the Executive.

You did not judge amiss of Mr. Jay. The paragraph affirming a change in this opinion of the plan of the Convention, was an arrant forgery. He has contradicted it in a letter to Mr. J. Vaughan which has been printed in the Philadelphia Gazettes. Tricks of this sort are not uncommon with the Enemies of the new Constitution. Col. Mason's objections were as I am told published in Boston mutilated

of that which pointed at the regulation of Commerce. Doc^r^ Franklin's concluding speech which you will meet with in one of the papers herewith inclosed, is both mutilated & adulterated so as to change both the form & spirit of it.

I am extremely obliged by the notice you take of my request concerning the Potomack. I must insist that you will not consider it as an object of any further attention.

The Philad^a^ papers will have informed you of the result of the Convention of that State. N. Jersey is now in Convention, & has probably by this time adopted the Constitution. Genl Irvine, of the Pen^a^ Delegation, who is just arrived here, and who conversed with some of the members at Trenton tells me that great unanimity reigns in the Convention.

Connecticut it is pretty certain will decide also in the Affirmative by a large majority. So, it is presumed will N. Hampshire; though her Convention will be a little later than could be wished. There are not enough of the returns in Mass^ts^ known for a final judgment of the probable event in that State. As far as the returns are known they are extremely favorable: but as they are chiefly from the maritime parts of the State, they are a precarious index of the public sentiment. I have good reason to believe that if you are in correspondence with any Gentleman in that quarter, and a proper occasion should offer for an explicit communication of your good wishes for the plan, so as barely to warrant an explicit assertion of the fact, that it would be attended with valuable

effects. I barely drop the idea. The circumstances on which the propriety of it depends, are best known to, as they will be best judged of by yourself. The information from N. Carolina gave me great pleasure. We have nothing from the States South of it.

TO THOMAS JEFFERSON.

CHIC. HIST. SOC. MSS.

NEW YORK, December 20, 1787.

DEAR SIR:—

The packet has been detained here since the date of the letter which you will receive along with this, by some preparations suggested by an apprehension of war. The delay is very unfavorable to the trees on board for you.

Mr. De la Forest,[1] the consul here, called on me a few days ago and told me he had information that the farmers general and Mr. Morris having found their contract mutually advantageous, are evading the resolution of the committee by tacit arrangements for its continuance. He observed that the object of the farmers was singly profit, that of the Government twofold, revenue and commerce. It was consequently the wish of the latter to render the monopoly as little hurtful to the trade with America as possible. He suggested as an expedient that farmers should be required to divide the contracts among six or seven houses, French and American,

[1] Then Vice-Consul-General of France "with Congress." He was Consul-General for New York, Pennsylvania, New Jersey, and Delaware from October 17, 1792.

who should be required to ship annually to America a reasonable proportion of goods. This he supposed would produce competition in the purchases here and would introduce a competition also with British goods here. The latter condition he said could not be well required of, or executed by a single contractor, and the Government could not abolish the farm. These ideas were meant for you.

Since the date of my other letter, the Convention of Delaware have unanimously adopted the new Constitution.[1] That of Pennsylvania has adopted it by a majority of 46 against 23. That of New Jersey is sitting and will adopt pretty unanimously. These are all the Conventions that have met. I hear from North Carolina that the Assembly is well disposed. Mr. Henry, Mr. Mason, R. H. Lee, and the Governor continue by their influence to strengthen the opposition in Virginia. The Assembly there is engaged in several mad freaks. Among others a bill has been agreed to in the House of Delegates *prohibiting* the importation of rum, *brandy*, and all other spirits not distilled from some American production. All brewed liquors under the same description, with beef, tallow-candles, cheese, &c. are included in the prohibition. In order to enforce this despotic measure the most despotic means are resorted to. If any person be found after the commencement of the act, in the use or *possession* of any of the prohibited

[1] Delaware was the first State to ratify the Constitution—December 7, 1787. Pennsylvania, the second State, ratified December 12th; New Jersey, the third State, December 18th.

articles, tho' acquired previous to the law, he is to lose them, and pay a heavy fine. This is the form in which the bill was agreed to by a large majority in the House of Delegates. It is a child of Mr. Henry and said to be his favorite one. They first voted by a *majority of 30* that all legal obstruction to the Treaty of Peace should cease in Virginia as soon as laws complying with it should have passed in all the other states. This was the result of four days debate with the most violent opposition from Mr. Henry. A few days afterward he renewed his efforts, and got a vote, *by a majority of 50*, that Virginia would not comply until G. B. shall have complied.

The States seem to be either wholly omitting to provide for the federal Treasury, or to be withdrawing the scanty appropriations made to it. The latter course has been taken up by Massachusetts, Virginia and Delaware. The Treasury Board seems to be in despair of maintaining the shadow of Government much longer. Without money, the offices must be shut up, and the handful of troops on the frontier disbanded, which will probably bring on an Indian War, and make an impression to our disadvantage on the British Garrisons within our limits.

A letter from Mr. Arch^{d} Stuart dated Rich^{d}, Dec. 2, has the following paragraph "Yesterday a Boat with sixteen men was brought down the canal from Westham to its termination which is within one mile and a half of Richmond."

I subjoin an extract from a letter from Genl.

Washington dated Dec. 7th which contains the best information I can give as to the progress of the works on the Potomac.

"The survey of the Country between the Eastern & Western waters is not yet reported by the Commissioners, though promised to be made very shortly, the survey being completed—no draught that can convey the adequate idea of the work on this river has been yet taken—much of the labor, except at the great falls, has been bestowed in the bed of the river, in a removal of rocks, and deepening the water. At the great falls the labour has indeed been great. The water there (a sufficiency I mean) is taken into a Canal about two hundred yards above the cateract, & conveyed by a level cut (through a solid rock in some places, and much stone every where) more than a mile to the lock seats,—five in number by means of which when completed, the craft will be let into the River below the falls (wch together amount to seventy six feet.)—At the Seneca Falls, six miles above the great falls, a channel which has been formed by the river when inundated is under improvement for navigation—The same, in part, at Shanandoah.—At the lower falls, where nothing has yet been done, a level cut and locks are proposed. These constitute the principal difficulties and will be the great expense of this undertaking—The parts of the river between requiring loose stones only to be removed in order to deepen the water where it is too shallow in dry seasons."

The triennial purge administered to the Council in

Virg[a] [1] has removed from their seats Samson Matthews—and Mr. Selden. Col. Wm. Heth and Major Jos. Egglestone Supply their places.—I remain D[r] Sir Y[rs] affect.

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Dec[r] 26, 1787.

DEAR SIR,—

I am just informed by a Delegate from New Hampshire that he has a letter from President Sullivan which tells him that the Legislature had unanimously agreed to call a convention as recommended, to meet in February. The second wednesday is the day if I have not mistaken it. We have no further information of much importance from Massachusetts. It appears that Cambridge the residence of Mr. Gerry has left him out of the choice for the Convention, and put in Mr. Dana formerly Minister of the U. States in Europe, and another Gentleman, both of them firmly opposed to Mr. Gerry's Politics. I observe too in a Mass[ts] paper that the omission of Col. Mason's objection with regard to commerce in the first publication of his objections, has been supplied. This will more than undo the effect of the mutilated view of them. New Jersey the Newspapers tell us has adopted the Constitution unanimously. Our European intelligence remains perfectly as it stood at the date of my last.

[1] The Privy Council or Council of State of Virginia consisted of eight members. Every two years two members were removed by joint ballot of the Assembly and were ineligible for re-election for the next three years, their places being filled by election by the Assembly. See *ante*, Vol. II., p. 40, for Madison's opinion of the Council.

With the most affectionate esteem & attachment I am, Dear Sir, Your Obedient & very hble servt.

TO EDMUND RANDOLPH. CHIC. HIST. SOC. MSS.

NEW YORK, January 10, 1788.

MY DEAR FRIEND,

I have put off writing from day to day for some time past, in expectation of being able to give you the news from the packets, which has been looked for every hour. Both the French & English have overstayed their usual time ten or 15 days, and are neither of them yet arrived. We remain wholly in the dark with regard to the posture of things in Europe—

I received two days ago your favor of December twenty seventh, enclosing a copy of your letter[1] to the Assembly. I have read it with attention, and I can add with pleasure, because the spirit of it does as much honor to your candor, as the general reasoning does to your abilities. Nor can I believe that in this quarter the opponents of the Constitution will find encouragement in it. You are already aware that your objections are not viewed in the same decisive light by me that they are by you. I must own that I differ still more from your opinion, that a prosecution of the experiment of a second Conven-

[1] Randolph's letter was dated October 16, 1787, but not published until some weeks later. It may be seen in *Elliot's Debates*, i., 482. About the time of this letter of Madison's he became more definitely arrayed against the opponents of the Constitution. See Conway's *Randolph*, 99; also *ante*, p. 8, n.

tion will be favorable, even in Virginia, to the object which I am sure you have at heart. It is to me apparent that, had your duty led you to throw your influence into the opposite scale, it would have given it a decided and unalterable preponderancy; and that Mr. Henry would either have suppressed his enmity, or been baffled in the policy which it has dictated. It appears also that the grounds taken by the opponents in different quarters forbid any hope of concord among them. Nothing can be further from your views than the principles of different setts of men who have carried on their opposition under the respectability of your name. In this State the party adverse to the Constitution notoriously meditate either a dissolution of the Union, or protracting it by patching up the Articles of Confederation. In Connecticut and Massachusetts, the opposition proceeds from that part of the people who have a repugnance in general to good government, or to any substantial abridgement of State powers, and a part of whom in Massachusetts are known to aim at confusion, and are suspected of wishing a reversal of the Revolution. The minority in Pennsylvania, as far as they are governed by any other views than an habitual opposition to their rivals, are manifestly averse to some essential ingredients in a National Government. You are better acquainted with Mr. Henry's politics than I can be, but I have for some time considered him as driving at a Southern Confederacy and not further concurring in the plan of amendments than as

he hopes to render it subservient to his real designs. Viewing the matter in this light, the inference with me is unavoidable that were a second trial to be made, the friends of a good constitution for the Union would not only find themselves not a little differing from each other as to the proper amendments; but perplexed and frustrated by men who had objects totally different. A second Convention would, of course, be formed under the influence, and composed in a great measure of the members of the opposition in the several States. But were the first difficulties overcome, and the Constitution re-edited with amendments, the event would still be infinitely precarious. Whatever respect may be due to the rights of private judgment, and no man feels more of it than I do, there can be no doubt that there are subjects to which the capacities of the bulk of mankind are unequal, and on which they must and will be governed by those with whom they happen to have acquaintance and confidence. The proposed Constitution is of this description. The great body of those who are both for and against it must follow the judgment of others, not their own. Had the Constitution been framed and recommended by an obscure individual, instead of a body possessing public respect and confidence, there cannot be a doubt, that although it would have stood in the identical words, it would have commanded little attention from most of those who now admire its wisdom. Had yourself, Colonel Mason, Colonel R. H. L., Mr. Henry, and a few others, seen

the Constitution in the same light with those who subscribed it, I have no doubt that Virginia would have been as zealous and unanimous, as she is now divided, on the subject. I infer from these considerations, that, if a government be ever adopted in America, it must result from a fortunate coincidence of leading opinions, and a general confidence of the people in those who may recommend it. The very attempt at a second Convention strikes at the confidence in the first; and the existence of a second, by opposing influence to influence would in a manner destroy an effectual confidence in either, and give a loose rein to human opinions; which must be as various and irreconcileable concerning theories of government, as doctrines of religion; and give opportunities to designing men which it might be impossible to counteract.

The Connecticut Convention has probably come to a decision before this; but the event is not known here.[1] It is understood that a great majority will adopt the Constitution. The accounts from Massachusetts vary extremely according to the channels through which they come. *It is said* that S. Adams, who has hitherto been reserved, begins to make open declaration of his hostile views. His influence is not great, but this step argues an opinion that he can calculate on a considerable party. It is said here, and I believe on good ground, that North Carolina has postponed her Convention till July, in order to

[1] Connecticut was the fifth State to ratify the Constitution—January 9, 1788.

have the previous example of Virginia. Should North Carolina fall into Mr. Henry's politics, which does not appear to me improbable, it will endanger the Union more than any other circumstance that could happen. My apprehensions of this danger increase every day. The multiplied inducements at this moment to the local sacrifices necessary to keep the States together, can never be expected to coincide again, and they are counteracted by so many unpropitious circumstances, that their efficacy can with difficulty be confided in. I have no information from South Carolina or Georgia, on which any certain opinion can be formed of the temper of those States. The prevailing idea has been, that both of them would speedily and generally embrace the Constitution. It is impossible, however, that the example of Virginia and North Carolina should not have an influence on their politics. I consider every thing therefore problematical from Maryland southward.

I am surprised that Col. H. Lea who is a well-wisher of the Constitution should have furnished Wilkinson with the alarm concerning the Mississippi, but the political connections of the latter in Pennsylvania would account for his bias on the subject.

We have no Congress yet. The number of States on the spot does not exceed five. It is probable that a quorum will now be soon made. A delegate from New Hampshire is expected, which will make up a representation from that State. The termination of

the Connecticut Convention will set her Delegates at liberty, and the meeting of the Assembly of this State, will fill the vacancy which has some time existed in her Delegation.

I wish you every happiness,
And am with the sincerest affection,
Yrs.

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Jany 14, 1788.

DEAR SIR,

The Daily Advertiser of this date contains several important articles of information, which need only to be referred to. I inclose it, with a few other late papers. Neither French nor English packet is yet arrived; and the present weather would prevent their getting in if they should be on the Coast. I have heard nothing of consequence from Massachusetts since my last. The accounts from New Hampshire continue to be as favorable as could be wished. From South Carolina we get no material information. A letter from Georgia of the 25 of Decr says that the Convention was getting together at Augusta and that everything wore a federal complexion.[1] N. Carolina, it seems, has been so complaisant to Virginia as to postpone her Convention till July. We are without a Congress.

With perfect esteem & attachment I remain, Dear Sir Your Obed^{t} humble Servt

[1] Georgia ratified January 2, 1788, the fourth State.

TO GEORGE WASHINGTON. WASH. MSS.

N. YORK, Jany 20, 1788.

DEAR SIR,—The Count de Moustier arrived here a few days ago as successor to the Chev^{r} de la Luzerne. His passage has been so tedious that I am not sure that the despatches from Mr. Jefferson make any considerable addition to former intelligence. I have not yet seen them, but am told that this is the case. In general, it appears that the affairs of Holland are put into a pacific train. The Prussian troops are to be withdrawn, and the event settled by negotiations. But it is still possible that the war between the Russians & Turks may spread a general flame throughout Europe.

The intelligence from Massachusetts begins to be very ominous to the Constitution. The antifederal party is reinforced by the insurgents, and by the province of Mayne, which apprehends greater obstacles to the scheme of a separate Government from the new system than may be otherwise experienced. And according to the prospect at the date of the last letters, there was very great reason to fear that the voice of that State would be in the negative. The operation of such an event on this State may easily be foreseen. Its Legislature is now sitting and is much divided. A majority of the Assembly are said to be friendly to the merits of the Constitution. A majority of the Senators actually convened are opposed to a submission of it to a Convention. The arrival of the absent members will render the voice of that branch uncertain on the point of a Conven-

tion. The decision of Massachusetts either way will involve the result in this State. The minority in Penn[a] is very restless under their defeat. If they can get an Assembly to their wish they will endeavour to undermine what has been done there. If backed by Mass[ts], they will probably be emboldened to make some more rash experiment. The information from Georgia continues to be favorable. The little we get from S. Carolina is of the same complexion.

If I am not misinformed as to the arrival of some members for Congress, a quorum is at length made up.

With the most perfect esteem & attachment I remain Dear Sir

Your Obed[t] humble Servant.

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

N. York, Jan[y] 20. 1788.

My dear friend

I have received your favor of the 3 inst. By a letter from M[r] Turberville of later date I have the mortification to find that our friend M[r] Jones has not succeeded in his wish to be translated from the Executive to the Judiciary Department. I had supposed that he stood on ground that could not fail him in a case of that sort, and am wholly at a loss to account for the disappointment.

The Count de Moustier arrived a few days ago as successor to the Chev[r] de la Luzerne. He had so

long a passage that I do not know whether the dispatches brought by him, contain much that is new. It seems that although the affairs of Holland are put into a pacific train, those of the Russians & Turks may yet produce a general broil in Europe. The Prussian Troops are to be withdrawn & the fate of the Dutch regulated by negociation.

The intelligence from Massach^{ts} begins to be rather ominous to the Constitution. The interest opposed to it is reinforced by all connected with the late insurrection, and by the province of Mayne which apprehends difficulties under the new system in obtaining a separate government greater than may be otherwise experienced. Judging from the present state of the intelligence as I have it, the probability is that the voice of that State will be in the negative. The Legislature of this State is much divided at present. The House of Assembly are said to be friendly to the merits of the Constitution. The Senate, at least a majority of those actually assembled, are opposed even to the calling a Convention. The decision of Mass^{ts} in either way, will decide the voice of this State. The minority of Penn^{a} are extremely restless under their defeat, will endeavor at all events if they can get an assembly to their wish to undermine what has been done there, and will it is presumed be emboldened by a negative from Mass^{ts} to give a more direct & violent form to their attack. The accounts from Georgia are favorable to the Constitution. So they are also from S. Carolina, as far as they extend.

If I am not misinformed as to the arrival of some

members of Congress in Town, a quorum is at length made up.

Yours affect^ly^

TO GEORGE WASHINGTON. WASH. MSS.

N YORK, Jany 25, 1788.

DEAR SIR,—

I have been favored since my last with yours of the 10th inst,[1] with a copy of the Governors letter to the Assembly. I do not know what impression the letter may make in Virginia. It is generally understood here that the arguments contained in it in favor of the Constitution are much stronger than the objections which prevented his assent. His arguments are forcible in all places, and with all persons. His objections are connected with his particular way of thinking on the subject, in which many of the adversaries to the Constitution do not concur.[2]

[1] The letter related to the state of public opinion in Virginia. "That the opposition should have gained strength at Richmond," it said, "among the members of Assembly, is not, if true, to be wondered at, when we consider that the great adversaries to the Constitution are all assembled at that place, acting conjointly, with the promulgated sentiments of Colonel Richard Henry Lee as auxiliary."—*Writings* (Ford), xi., 207.

[2] December 27, 1787, Edmund Randolph wrote that the current was against the Constitution; that Gen. Wilkinson was violently opposed to it.—*Chic. Hist. Soc. MSS.*

Henry Lee wrote on his way home from Richmond, Dec. — 1787: "Three sets of men are to be found on the question of government. One opposed to any system, was it even sent from heaven which tends to confirm the union of the States—Henry is the leader of this band—Another who would accept the new Constitution from conviction of its excellence, or any federal system, sooner than [?] the dissolution of

The information from Boston by the mail on the evening before last, has not removed our suspense.

the confederacy, & a third who dislike the proposed government, wish it amended, but if this is not practicable, would adopt it sooner than jeopardize the Union—Mason may be considered as the head of this set—

"From such a discordance in opinion, I believe if the friends to the govt. in the State Convention should manage wisely, & if nine States should have ratified it before Virga assembles that we may count on the dominion as an accepting State. Your county is divided like many others in their sentiments—Barber & Burnley are warmly opposed & may consider it their duty to prevent your election. . . . If you think you may fail in Orange several countys in Kentucky would on application by let. elect you."

Archibald Stuart wrote from Richmond, January 14:

"The anti-constitutional Fever which raged here some time ago begins to abate & I am not without hopes that many patients will be restored to their senses—Mr. Page of Rosewell has become a convert. Gen. Nelson begins to view the Govt with a more favorable eye & I am told St. G: Tucker has confessed his sins.

"Publius is in general estimation, his greatness is acknowledged universally—Colo Carrington has sent me his numbers as low down as ye 24th inclusive which Dixon has been printing for some time past & should he leave New York I must rely upon yourself & Mr. Brown to transmit the remainder of them as they shall appear—They may be directed to me or in my absence to Mr. John Dixon— . . .

"Pray let nothing divert you from coming to ye Convention—"

Edward Carrington wrote from Richmond, January 18:

"The leaders of the opposition appear generally to be preparing for a decent submission—the language amongst them is, that amendments must be tried if there should, at the sitting of the convention, be a prospect of carrying them down in a respectable number of States, but that should this appear improbable, the constitution must be adopted —I have seen but few of these Gentlemen but have good information as to most of their dispositions upon the subject. The Governour's letter to the Public, which you doubtless have before this seen, marks out this conduct, and I think that publication will be of great service. Mr. Henry, it is said, is determined to amend & leave the fate of the measure to depend on all the other States conforming to the Will of Virginia. His language is, that the other States cannot do without

The following is an extract of a letter from Mr. King, dated on the 16th inst.[1]

"We may have 360 members in our Convention. Not more than 330 have yet taken their seats. Immediately after the settlement of Elections, the Convention resolved that they would consider and freely debate on each paragraph without taking a question on any of them individually, & that on the question whether they would ratify, each member should be at liberty to discuss the plan at large. This Resolution seems to preclude the idea of amendments; and hitherto the measure has not been suggested. I however do not from this circumstance

us, and therefore we can dictate to them what terms we please—should they be weak enough to stand out, we may alone enter into foreign alliances—the value of our staple is such that any nation will be ready to treat with us separately—I have not heard of any who have shewn a disposition to go this length with him, except Mr. Bullet whom I saw at Dumfries, and I think at the day of trial but few will be found so mad.

"Mr. B. Randolph whose apprehensions from the Gigantic features in the constitution, appear to be as high as any whatever, is of opinion with the Governor—He thinks that should nine states have adopted when the Convention of Virginia meets, every idea of amendment ought to be abandoned, but that should there be a less number the attempt must be made, but with such caution as not to hazard entirely the fate of the measure. I am persuaded that this will become the prevailing sentiment amongst the malcontents, and in that case there will be tolerable safety, because I see no prospect of more than Rhode Isld N. York & North Carolina holding out—the latter, it is said, & I believe with truth, have, out of respect for Virginia, defered her convention until after the time appointed for ours to sit."—*Mad. MSS.*

[1] The original of the letter is among the Madison MSS. Madison has given the whole of it here with perfect accuracy.

When King left New York he wrote to Madison Jany. 6, 1788, asking him to furnish him with information to use in the Massachusetts Convention.—*Mad. MSS.*

conclude that it may not hereafter occur. The opponents of the Constitution moved that Mr. Gerry should be requested to take a seat in the Convention to answer such enquiries as the Convention should make concerning facts which happened in the *passing of the* Constitution. Although this seems to be a very irregular proposal, yet considering the jealousies which prevail with those who made it, (who are certainly not the most enlightened part of the Convention,) and the doubt of the issue had it been made a trial of strength, several friends of the Constitution united with the opponents and the resolution was agreed to and Mr. Gerry has taken his seat. Tomorrow we are told certain enquiries are to be moved for by the opposition, and that Mr. Gerry under the idea of stating facts is to state his reasons, &c.—this will be opposed and we shall on the division be able to form some idea of our relative strength. From the men who are in favour of the Constitution every reasonable explanation will be given, and arguments really new and in my judgment most excellent have been and will be produced in its support. But what will be its fate, I confess I am unable to discern. No question ever classed the people of this State in a more extraordinary manner, or with more apparent firmness."

A Congress of seven States was made up on monday. Mr. C. Griffin has been placed in the chair. This is the only step yet taken.

I remain, with the highest respect & Attachm^{t},

Y^{rs} Affect^{y}

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Jan? 28 1788.

DEAR SIR,

The information which I have by the Eastern mail rather increases than removes the anxiety produced by the last. I give it to you as I have rec^{d} it in the words of Mr. King:

"BOSTON, 20 Jan?, 1788.

"Our Convention proceeds slowly. An apprehension that the liberties of the people are in danger, and a distrust of men of property or education have a more powerful effect upon the minds of our opponents than any specific objections against the Constitution. If the opposition was grounded on any precise points, I am persuaded that it might be weakened, if not entirely overcome. But any attempt to remove their fixed and violent jealousy seems hitherto to operate as a confirmation of that baneful passion. The opponents affirm to each other that they have an unalterable majority on their side. The friends doubt the strength of their adversaries but are not entirely confident of their own. An event has taken place relative to Mr. Gerry, which without great caution may throw us into confusion. I informed you by the last post on what terms Mr. Gerry took a seat in the Convention. Yesterday in the course of debate on the Construction of the Senate, Mr. G., *unasked*, informed the Convention that he had some information to give the Convention on the subject then under discussion. Mr. Dana and a number of the most respectable

members, remarked upon the impropriety of Mr. G.'s conduct. Mr. G. rose with a view to justify himself. He was immediately prevented by a number of objectors. This brought on an irregular conversation whether Mr. G. should be heard. The Hour of adjournment arrived and the President adjourned the House. Mr. Gerry immediately charged Mr. Dana with a design of injuring his reputation by partial information, and preventing his having an opportunity to communicate important truths to the Convention. This charge drew a warm reply from Mr. Dana. The members collected about them, took sides as they were for or against the Constitution, and we were in danger of the utmost confusion. However the gentlemen separated and I suppose to-morrow morning will renew the discussion before the Convention. I shall be better able to conjecture the final issue by next post."

There are other letters of the same date from other gentlemen on the spot which exhibit rather a more favorable prospect. Some of them I am told are even flattering. Accounts will always vary in such cases, because they must be founded on different opportunities of remarking the general complexion; where they take no tincture from the opinions or temper of the writer.

I remain Dear Sir with the most perfect esteem & attachment

Your Obed^{t} Servt

TO GEORGE WASHINGTON. WASH. MSS.

N. YORK, Feby 1788.

DEAR SIR,

The Eastern mail which arrived yesterday brought me a letter from Mr. King, of which a copy follows: "Our prospects are gloomy, but hope is not entirely extinguished. Gerry has not returned to the Convention, and I think will not again be invited. We are now thinking of amendments to be submitted not as a condition of our assent & ratification, but as the opinion of the Convention subjoined to their ratification. This scheme may gain a few members but the issue is doubtful."

In this case as in the last Mr. King's information is accompanied with letters from other persons on the spot, which dwell more on the favorable side of the prospect. His anxiety on the subject may give a greater activity to his fears than to his hopes; and he would naturally lean to the cautious side. These circumstances encourage me to put as favorable a construction on his letter as it will bear.

A vessel is arrived here from Charleston, which brings letters that speak with confidence of an adoption of the fed Government in that State; and make it very probable that Georgia had actually adopted it. Some letters from N. Carolina speak a very equivocal language as to the prospect there.

The French Packet arrived yesterday. As she has been out since early in November little news can be expected by her. I have not yet got my letters if

there be any for me and I have heard the contents of no others.

I remain Dr Sir, with the utmost respect & attachment, Yr Affet Servt

TO GEORGE WASHINGTON. WASH. MSS.

N. York, Febr 3d, 1788

Dear Sir,

Another mail has arrived from Boston without terminating the conflict between our hopes and fears. I have a letter from Mr. King, of the 27 which after dilating somewhat on the ideas in his former letters, concludes with the following paragraph [1]: "We have avoided every question which would have shewn the division of the House. Of consequence we are not positive of the numbers on each side. By the last calculation we made on our side, we were doubtful whether we exceeded them or they us in numbers. They however say that they

[1] The preceding portion of King's letter is as follows:

"We make but slow progress in our convention, the Friends of the constitution who in addition to their own weight, are respectable as they represent a very large proportion of the Good sense and Property of this state, have the Task not only of answering, but also of stating and bringing forward, the objection of their Opponents—The opposition complain that the Lawyers, Judges, Clergymen, Merchants and men of Education are all in Favor of the constitution, & that for this reason they appear to be able to make the worst, appear the better cause—But say they if we had men of this Description on our side we should alarm the People with the Imperfections of the constitution, & be able to refute the Defense set up in its favor—Notwithstanding the superiority of Talents in favor of the constitution yet the same infatuation, which prevailed not many months since in several counties of this state, and which emboldened them to take arms agt the Gov-

have a majority of eight or twelve against us. We by no means despair." Another letter of the same date from another member gives the following picture[1]: "Never was there an Assembly in this State in possession of greater ability & information than the present Convention. Yet I am in doubt whether they will approve the Constitution. There are unhappily three parties opposed to it—1. all men who are in favor of paper money & tender laws; those are more or less in every part of the State: 2. all the late insurgents & their abettors.—In the three great western Counties they are very numerous. We have in the Convention 18 or 20 who were actually in Shays' army;—3. A great majority of the members from the province of Main. Many of them & their Constituents are only squatters on other people's land, and they are afraid of being brought to account—they also think though erroneously that their favorite plan, of being a separate State will be defeated. Add to these the honest doubting people, and they make a powerful host. The leaders of this

ernment seems to have an uncontroulable authority over a numerous part of our Convention—their objections are not directed against any part of the constitution, but their opposition seems to arise from an opinion, that is immoveable, that some injury is plotted against them, that the system is the production of the Rich, and ambitious; that they discern its operation, and that the consequence will be, the establishment of two orders in the Society, one comprehending the opulent & Great, the other the poor and illiterate—

"The extraordinary union in favor of the constitution in this state, of the wealthy and sensible part of it is a confirmation of their Opinions and every Exertion hitherto made to eradicate it has been in vain."—*Mad. MSS.*

[1] The letter is not among the Madison MSS.

party are a Mr. Widgery Mr. Thomson, & Mr. Nason, from the province of Main. A Doc^r Taylor, from the County of Worster & Mr. Bishop from the neighbourhood of R. Island. To manage the cause ag^st them are the present and late Govr, 3 Judges of the supreme Court. 15 members of the Senate; 20 from among the most respectable of the Clergy, 10 or 12 of the first characters at the bar, Judges of probate, High sheriffs of Counties & many other respectable people Merchants &c. Gen^ls Heath, Lincoln, Brooks, & others of the late army. With all this ability in support of the cause, I am pretty well satisfied we shall lose the question, unless we can take off some of the Opposition by amendments. I do not mean such as are to be made conditions of the ratification, but recommendations only. Upon this plan I flatter myself we may possibly get a majority of 12 or 15, if not more."

The Legislature of this State has voted a Convention on June 17.

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Feby 8, 88.

DEAR SIR,

The prospect in Mass^ts seems to brighten, if I view in the true light the following representation of it. "This day, (Jany 30,) for the first our President, Mr. Handcock took his seat in Convention, and we shall probably terminate our business on Saturday or tuesday next. I cannot predict the issue, but our hopes are increasing. If Mr. Hancock does not

disappoint our present expectations, our wishes will be gratified."[1] Several reflections are suggested by this paragraph which countenance a favorable inference from it. I hope from the rapid advance towards a conclusion of the business, that even the project of recommendatory alterations has been dispensed with.[2]

The form of the ratification of Georgia is contained in one of the papers herewith inclosed. Every information from S. Carolina continues to be favorable. I have seen a letter from N. Carolina, of pretty late date which admits that a very formidable opposition exists, but leans towards a federal result in that State. As far as I can discover, the state of the question in N. Carolina, is pretty analogous to that in Virginia. The body of the people are better disposed than some of a superior order. The Resolutions of New York for calling a convention appear, by the paper to have passed by a majority of two only in the House of Assembly. I am told this proceeded in some degree from an injudicious form in which the business was conducted, and which threw some of the federalists into the opposition.

I am just informed by a gentleman who has seen another letter from Boston of the same date with mine, that the plan of recommendatory alterations has not been abandoned, but that they will be put

[1] The letter adds: "But his character is not entirely free from a portion of caprice—this however is confidential—Farewell."—*Mad. MSS.*

[2] Massachusetts adopted the Constitution February 7.

into a harmless form, and will be the means of saving the Constitution from all risk in Mass^ts.

With the highest respect & attachment,

I remain Dear Sir, Your aff^e & hbl^e Servt.

TO GEORGE WASHINGTON. WASH. MSS.

DEAR SIR, N. YORK, Feby 11, 88.

The newspaper inclosed with the letter which follows, comprises the information brought me by the mail of yesterday

"BOSTON, Feby 3^d

"I inclose a newspaper containing the propositions communicated by Mr. Hancock to the Convention on thursday last. Mr. Adams who contrary to his own sentiments has been hitherto silent in Convention, has given his Public and explicit approbation of Mr. Hancock's propositions. We flatter ourselves that the weight of these two characters will ensure our success; but the event is not absolutely certain. Yesterday a committee was appointed on the motion of a doubtful character to consider the propositions submitted by Mr. Hancock and to report to-morrow afternoon. We have a majority of federalists on this Committee and flatter ourselves the result will be favorable. P. S. We shall probably decide on thursday or friday next, when our numbers will amount to about 363." [1]

With greatest esteem & attachment

I am Dear Sir, Y^r Obed^t & aff^e Servt.

[1] The following final sentence is omitted by Madison: "Gerry has kept at Cambridge & our opponents say nothing of his reinvitation."

TO GEORGE WASHINGTON. MAD. MSS.

NEW YORK, Feby 15, 1788.

DEAR SIR,

I have at length the pleasure to inclose you the favorable result of the Convention at Boston. The amendments are a blemish, but are in the least offensive form. The minority also is very disagreeably large, but the temper of it is some atonement. I am assured by Mr. King that the leaders of it as well as the members of it in general are in good humor; and will countenance no irregular opposition there or elsewhere.[1] The Convention of New Hampshire is now sitting. There seems to be no question that the issue there will add a *seventh* pillar, as the phrase now is, to the federal Temple.

With the greatest respect & attachment,
I am, Dr Sir Yrs.

TO THOMAS JEFFERSON. MAD. MSS.

NEW YORK, Feby 19, 1788.

DEAR SIR,

By the Count de Moustier I received your favour of the 8th of October. I rec'd by his hands also the

Madison sent the letter to Alexander Hamilton to read with this note added: "Read the above immediately & send it back by the bearer who will wait for it. I shall be glad of the newspaper in about an Hour & an half."—*Mad. MSS.*

[1] Following is King's letter, dated Boston, Feb. 6, 1788:

"I have the satisfaction to inform you that on the final Question of assenting to & ratifying the constitution our convention divided, and 187 were in the affirmative & 168 in the negative: the majority although small is extremely respectable, and the minority are in good temper; they have the magnanimity to declare that they will devote

watch which you have been so good as to provide for me, and for which I beg you to accept my particular thanks. During the short trial I have made she goes with great exactness. Since the arrival of the Count de Moustier, I have rec'd also by the Packet Mr. Calonui's publication for myself, and a number of the Mercuries for Mr. Banister. The bearer was a Mr. Stuart. I had a conveyance to Mr. Banister a few days after the Mercuries came to hand.

The Public here continues to be much agitated by the proposed federal Constitution and to be attentive to little else. At the date of my last, Delaware Pennsylvania, and New Jersey, had adopted it. It has been since adopted by Connecticut, Georgia, and Massachusetts. In the first the minority consisted of 40 against 127. In Georgia, the adoption was unanimous. In Massachusetts the conflict was tedious and the event extremely doubtful. On the final question the vote stood 187 against 168; a majority of 19 only being in favor of the Constitution.

The prevailing party comprized however all the men of abilities, of property, and of influence. In the opposite multitude there was not a single character capable of uniting their wills or directing their measures. It was made up partly of deputies from the province of Maine, who apprehended difficulties from the New Government to their scheme of

their lives & property to support the Government, and I have no doubt but the ratification will be very cordially and universally approved through our State—N. Hampshire will undoubtedly decide in favor of the Constitution—Their convention met to-day. God bless you."—*Mad. MSS.*

separation, partly of men who had espoused the disaffection of Shay's; and partly of ignorant and jealous men, who had been taught or had fancied, that the Convention at Philad[a] had entered into a conspiracy against the liberties of the people at large, in order to erect an aristocracy for the rich the *well born*, and the men of Education. They had no plan whatever. They looked no farther than to put a negative on the Constitution and return home. The amendments as recommended by the Convention, were as I am well informed not so much calculated for the minority in the Convention, on whom they had little effect, as for the people of the State. You will find the amendments in the Newspapers which are sent from the office of foreign affairs. It appears from a variety of circumstances that disappointment had produced no asperity in the minority, and that they will probably not only acquiesce in the event, but endeavour to reconcile their constituents to it. This was the public declaration of several who were called the leaders of the party. The minority of Connecticut behaved with equal moderation. That of Pennsylvania has been extremely intemperate and continues to use a very bold and menacing language. Had the decision in Massachusetts been averse to the Constitution, it is not improbable that some very violent measures would have followed in that State. The cause of the inflammation however is much more in their State factions, than in the system proposed by the Convention. New Hampshire is now deliberating on the Constitution. It is

generally understood that an adoption is a matter of certainty. South Carolina & Maryland have fixed on April or May for their Conventions. The former it is currently said will be one of the ratifying States. Mr. Chace and a few others will raise a considerable opposition in the latter. But the weight of personal influence is on the side of the Constitution, and the present expectation is that the opposition will be outnumbered by a great majority. This State is much divided in its sentiment. Its Convention is to be held in June. The decision of Mass^{ts} will give the turn in favor of the Constitution unless an idea should prevail or the fact should appear, that the voice of the State is opposed to the result of its Convention. North Carolina has put off her Convention till July. The State is much divided, it is said. The temper of Virginia, as far as I can learn, has undergone but little change of late. At first there was an enthusiasm for the Constitution. The tide next took a sudden and strong turn in the opposite direction. The influence and exertions of Mr. Henry and Col. Mason and some others will account for this. Subsequent information again represented the Constitution as regaining in some degree its lost ground. The people at large have been uniformly said to be more friendly to the Constitution than the Assembly. But it is probable that the dispersion of the latter will have a considerable influence on the opinions of the former. The previous adoption of nine States must have a very persuasive effect on the minds of the opposition, though I am told that a very bold language is held

by Mr. H——y and some of his partizans. Great stress is laid on the self-sufficiency of that State, and the prospect of external props is alluded to.

Congress have done no business of consequence yet, nor is it probable that much more of any sort will precede the event of the great question before the public.

The Assembly of Virginia have passed the district Bill of which I formerly gave you an account. There are 18 districts, with 4 new Judges, Mr. Gab^{l} Jones, Richd Parker, St George Tucker and Jo^{s} Prentis. They have reduced much the taxes, and provided some indulgences for debtors. The question of British debts underwent great vicissitudes. It was, after long discussion resolv^{d} by a majority of 30 agst the utmost exertions of Mr. Henry that they sh^{d} be paid as soon as the other States sh^{d} have complied with the treaty. A few days afterwards he carried his point by a majority of 50 that G. B. should first comply. Adieu. Y^{rs} affect^{y}.

P. S. Mr. St. John has given me a very interesting description of a System of Nature, lately published at Paris. Will you add it for me. The Boxes which were to have come for myself G. W & [illegible] have not yet arrived.

TO GEORGE WASHINGTON. WASH. MSS.

DEAR SIR, NEW YORK, Feby 20, 1788.

I am just favored with yours of the 7th inst; and will attend to your wishes as to the political essays in the press.

I have given notice to my friends in Orange that the County may command my services in the Convention if it pleases.[1] I can say with great truth however that in this overture I sacrifice every private inclination to considerations not of a selfish nature. I foresee that the undertaking will involve me in very laborious and irksome discussions; that public opposition to several very respectable characters whose esteem and friendship I greatly prize may unintentionally endanger the subsisting connection; and that disagreeable misconstructions, of which samples have been already given, may be the fruit of those exertions which fidelity will impose. But I have made up my determination on the sub-

[1] Madison's father wrote to him from Orange, January 30:

"Col. Barbour I have not seen, he was not at Court; probably was preparing for his Mother's funeral, who was to be intered the day after. He is much opposed to it, and is a candidate for the Convention. I believe there were but few that disapproved of it at first, in this County; but several being at Richmond with their Tob° at the time the Assembly was sitting, & hearing the many objections made to it, altered their opinions, & have influenced others who are no better acquainted with the necessity of adopting it than they themselves; and the pieces published against it, have had their intended effect with some others.

"The Baptists are now generally opposed to it, as it is said; Col. Barbour has been down on Pamunky amongst them, & on his return, I hear, publickly declared himself a candidate, I suppose, on the encouragement he met with from the Antifederalists. I do not know at present any other Candidates but yourself & Mr Gordon, who is a warm friend to the Constitution, & I believe no others that are for it will offer. I think you had better come in as early in March as you can; many of your friends wish it; there are some who suspend their opinion till they see you, & wish for an explanation, others wish you not to come, & will endeavor to shut you out of the Convention, the better to carry their point."—*Mad. MSS.*

ject, and if I am informed that my presence at the election in the County be indispensable, shall submit to that condition also; though it is my particular wish to decline it, as well to avoid apparent solicitude on the occasion; as a journey of such length at a very unpleasant season.

I had seen the extract of your letter to Col. Carter, and had supposed from the place where it first made its appearance that its publication was the effect of the zeal of a correspondent. I cannot but think on the whole that it may have been of service, notwithstanding the scandalous misinterpretations of it which have been attempted. As it has evidently the air of a paragraph to a familiar friend, the omission of an argumentative support of the opinion given will appear to no candid reader unnatural or improper.

We have no late information from Europe except through the English papers, which represent the affairs of France as in the most ticklish state. The facts have every appearance of authenticity, and we wait with great impatience for the packet which is daily expected. It can be little doubted that the patriots have been abandoned; whether from impotency in France, misconduct in them, or from what other cause is not altogether clear. The French apologists are visibly embarrassed by the dilemma of submitting to the appearance of either weakness or the want of faith. They seem generally to allege that their engagements being with the Republic, the nation could not oppose the regular Authority of the

Country by supporting a single province, or perhaps a party in it only. The validity of this excuse will depend much on the real connection between France and the patriots, and the assurances given as an encouragement to the latter. From the British King's speech, it would seem that France had avowed her purpose of supporting her Dutch friends, though it is *possible* her menaces to England might be carried further than her real promises to the patriots. All these circumstances however must have galled the pride of France, and I have little doubt that a war will prove it as soon as her condition will admit of it; perhaps she may be the sooner forced into it on account of her being in a contrary situation.

I hear nothing yet from the Convention of N. Hampshire.

I remain, yours most respectfully & Affect^ly^,

TO EDMUND PENDLETON.

MAD. MSS.

NEW YORK, Feby 21, 88.

DEAR SIR,

The receipt of your favor of the 29th Ult.[1] which did not come to hand till a few days ago was rendered particularly agreeable to me by the prospect it gives of a thorough reestablishment of your health. I indulge the reflection and the hope that it denotes a remaining energy in the constitution, which will long defend it against the gradual waste of time.

[1] January 29, 1788, Pendleton had written to Madison from "Edmundsburg," saying that he favored the adoption of the constitution, but was open to conviction after hearing all sides. He earnestly urged Madison to come home.—*Chicago Hist. Soc. MSS.*

in Virg[a] as making cotemporary arrangements with her. It is explained to me however as having reference merely to the conveniency of the members whose attendance at their annual elections & courts would not consist with an earlier period. The opposition I understand is composed precisely of the same description of characters with that of Mass[ts], and stands contrasted to all the wealth, abilities, and respectability of the State.

I am preparing to set out for Orange,[1] and promise myself the pleasure of taking Mount Vernon in the way.

I remain, yours most respectfully & Affect[ly]

[1] Alexander Hamilton to Madison, New York, April 3, 1788:

"I think however the principles we talked of, in respect to the legislative authorities, are not only just but will apply to the other departments. Nor will the consequences appear so disagreeable, as they may seem at first sight, when we attend to the true import of the rule established. The States *retain* all the authorities they were *before* possessed of not alienated in the three modes pointed out; but this does not include cases which are the *creatures* of the New Constitution. For instance, the crime of treason against the United States *immediately*, is a crime known only to the New Constitution. There *was* no power in the state constitution to pardon that crime—There will therefore be none under the new &c. This or something like it seems to me to afford the best solution of the difficulty.

"I send you the Federalist from the beginning to the conclusion of the commentary on the Executive branch. If our suspicions of the author be right, he must be too much engaged to make a rapid progress in what remains.

"—The Court of Chancery & a Circuit Court are now Sitting.

"We are told that your election has succeeded; with which we all felicitate ourselves. I will thank you for an account of the result generally.

"In this state our prospects are much as you left them—A moot point which Side will prevail. Our friends to the northward are active. I remain &c."—*Mad. MSS.*

ties, of property, of character, with every judge, lawyer of eminence, and the clergy of all sects, were with scarce an exception deserving notice, as unanimous in that State as the same description of characters are divided and opposed to one another in Virginia. This contrast does not arise from circumstances of local interest, but from causes which will in my opinion produce much regret hereafter in the opponents in Virginia, if they should succeed in their opposition. N. Hampshire is now in Convention. It is expected that the result will be in favor of the Constitution. R. Island takes no notice of the matter. N. York is much divided. The weight of abilities and of property is on the side of the Constitution. She must go with the Eastern States let the direction be what it may. By a vessel just from Charleston we understand that opposition will be made there. Mr. Lowndes is the leader of it.

A *British* packet brings a picture of affairs in France which indicates some approaching events in that Kingdom which may almost amount to a Revolution in the form of its Government. The authority is in itself suspicious; but it coincides with a variety of proofs that the spirit of liberty has made a progress which must lead to some remarkable conclusion of the scene. The Dutch patriots seem to have been the victims partly of their own folly, and partly of something amiss in their friends. The present state of that Confederacy is or ought to be, a very emphatic lesson to the U. States. The want of Union and a capable Government is the source of all their

[illegible]

[illegible] MS.

[illegible]

[illegible] N Hampshire have disapproved [illegible] general convention. Instead of adopting the constitution they have appointed delegates [illegible] with powers to propose amendments. It is [illegible] a majority of 5 or 6 members would have [illegible] but in this majority were a [illegible] by positive instructions. These [illegible] with the federalists in the adjournment, [illegible] by a majority of 57 ag[ainst] 47. It is not [illegible] that in the event N. Hampshire will [illegible] the adopting States. But the influence of this check will be very considerable in this State, [illegible] York) and in several others.[1] I have enquired whether June was preferred for the 2[d] meeting from [illegible] reference to Virg[a] or N. York, and am informed

[1] [illegible] Griffin to Madison, New York, March 24, 1788: "The adjournment of N Hampshire, the small majority of Massachusetts, a probability of rejection in Rhode Island, the formidable opposition in the State of N York, the convulsions and committee meetings in Pennsylvania, and above all the antipathy of Virginia to the system, operating together, I am apprehensive will prevent the noble fabrick [illegible] being erected."—*Mad. MSS.*

that it was merely an accommodation to the intermediate annual elections & Courts.

I am just setting out for Virg[a] and shall not write again from this place. I wish you every happiness & am D[r] Sir

Y[r] Affe[e] friend

TO GEORGE WASHINGTON. WASH. MSS.

N. YORK, March 3[d] 1788.

DEAR SIR,

The Convention of N. Hampshire has afforded a very disagreeable subject of communication. It has not rejected the Constitution, but it has failed to adopt it. Contrary to all calculations that had been made it appeared on a meeting of the members that a majority of 3 or four was adverse to the object before them, and that on a final question on the merits, the decision would be in the negative. In this critical state of things, the federalists thought it best to attempt an adjournment, and having proselyted some of the members who were positively instructed ag[st] the Constitution, the attempt succeeded by a majority of 57 ag[st] 47, if my information as to the numbers be correct. It seems to be fully expected that some of the instructed members will prevail on their towns to unfetter them and that in the event N. Hampshire will be among the adopting States. The mischief elsewhere will, in the mean time be of a serious nature. The second meeting is to be in June. This circumstance will probably be construed

in Virg[a] as making cotemporary arrangements with her. It is explained to me however as having reference merely to the conveniency of the members whose attendance at their annual elections & courts would not consist with an earlier period. The opposition I understand is composed precisely of the same description of characters with that of Mass[ts], and stands contrasted to all the wealth, abilities, and respectability of the State.

I am preparing to set out for Orange,[1] and promise myself the pleasure of taking Mount Vernon in the way.

I remain, yours most respectfully & Affect[ly]

[1] Alexander Hamilton to Madison, New York, April 3, 1788:

"I think however the principles we talked of, in respect to the legislative authorities, are not only just but will apply to the other departments. Nor will the consequences appear so disagreeable, as they may seem at first sight, when we attend to the true import of the rule established. The States *retain* all the authorities they were *before* possessed of not alienated in the three modes pointed out; but this does not include cases which are the *creatures* of the New Constitution. For instance, the crime of treason against the United States *immediately*, is a crime known only to the New Constitution. There *was* no power in the state constitution to pardon that crime—There will therefore be none under the new &c. This or something like it seems to me to afford the best solution of the difficulty.

"I send you the Federalist from the beginning to the conclusion of the commentary on the Executive branch. If our suspicions of the author be right, he must be too much engaged to make a rapid progress in what remains.

"—The Court of Chancery & a Circuit Court are now Sitting.

"We are told that your election has succeeded; with which we all felicitate ourselves. I will thank you for an account of the result generally.

"In this state our prospects are much as you left them—A moot point which Side will prevail. Our friends to the northward are active. I remain &c."—*Mad. MSS.*

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

NEW YORK, March 3, 1788.

DEAR SIR,

The Convention of New Hampshire have disappointed the general expectation. They have not rejected the Constitution, but they have adjourned without adopting it. It was found that, on a final question, there would be a majority of three or four in the negative; but in this number were included some who, with instructions from their towns against the Constitution, had been proselyted by the discussions. These concurring with the Federalists in the adjournment, carried it by fifty-seven against forty-seven, if I am rightly informed as to the numbers. The second meeting is not to be till the last week in June. I have inquired of the gentlemen from that quarter, what particularly recommended so late a day, supposing it might refer to the times fixed by New York and Virginia. They tell me it was governed by the intermediate annual elections and courts. If the Opposition in that State be such as they are described, it is not probable that they pursue any sort of plan, more than that of Massachusetts. This event, whatever cause may have produced it, or whatever consequences it may have in New Hampshire, is no small check to the progress of the business. The Opposition here, which is unquestionably hostile to every thing beyond the *federal* principle, will take new spirits. The event in Massachusetts had almost extinguished

their hopes. That in Pennsylvania will probably be equally encouraged.

Col. Heth arrived a day or so ago with the proceedings of the Commissioners. They will be laid before Congress to-day. I have been detained from setting out for Virginia by this circumstance, having fixed on yesterday for the purpose. I shall probably get away to-morrow and possibly this afternoon.

TO GEORGE WASHINGTON. WASH. MSS.

DEAR SIR, ORANGE April 10 1788.

Having seen a part only of the names returned for the Convention, and being unacquainted with the political characters of many of them, I am a very incompetent prophet of the fate of the Constitution. My hopes however are much encouraged by my present conjectures. Those who have more data for their calculations than I have, augur a flattering issue to the deliberations of June. I find that Col. Nicholas,[1] who is among the best judges, thinks on

[1] George Nicholas wrote to Madison from Charlottesville, April 5, that there was a slight majority of federalists in the members elected to the Virginia convention, but that some of them would, he feared, be unwilling "to give the best hand" to the Constitution, unless the conduct of the other States justified it. If the Maryland and South Carolina conventions adjourned until Virginia had spoken the influence against favorable action by Virginia would be serious. Would Madison, therefore, impress upon his friends in those States the necessity for favorable action. Mr. Pendleton was being urged to favor amendments before ratification, but Madison was expected to prevent any change in his views. The opposition of Mason was due to his irritation and to the "vain opinion he entertains (which has industriously been supported by some particular characters) that he has

the whole, that a majority in the Convention will be on the list of federalists; but very properly takes

influence enough to dictate a constitution to Virginia, and through her to the rest of the union. Mr Henry is now almost avowedly an enemy to the union. . . . His real sentiments will be industriously concealed, for so long as he talks only of amendments such of the friends to the union, as object to particular parts of the constitution will adhere to him, which they would not do a moment, if they could be convinced of his real design. I hope to be possessed of sufficient information by the meeting of the convention to make that matter clear, and if I am it shall not be withheld. The opposition except from that quarter will be feeble. Our friend E. R. [andolph] talks of a compromise between the friends of the union, but I know of but one that can safely take place; and that is on the plan of the Massachusetts convention: it appears to me impossible that another continental convention assembled to deliberate on the whole subject, should ever agree on any general plan.

"Let the decision of our convention be what it may, I think it will be of great consequence that an address to the people at large should go forth from such of the members as are friends to the constitution: if this had been done in Pennsylvania, it would have counteracted much of the poison contained in the *dissent of the minority* . . . but if this government is rejected, America will be left without one, at least only in possession of one which all parties agree is insufficient; it will therefore be our duty to state to the people the necessity of a change and place in its true point of view the one now offered. Nine tenths of the people are strong friends to the union, and such of them as are opposed to the proposed government are so upon suppositions not warranted by the thing itself. No person in the convention can so well prepare this address as yourself, and if it appears as important in your eyes as it does to me, I hope that you will undertake it. The greater part of the members of the convention will go to the meeting without information on the subject, it will be very important to give this as early as may be, and if possible before—they go from home. *Publius* or *the fœderalist* if it is published in a pamphlet, would do it better than any other work; if it is published can I get the favor of you to procure me thirty or forty copies of it, that I may distribute them. . . .

"The only danger I apprehend is from the Kentucky members; and one consideration only has any weight with them: a fear that if the new government should take place, that their navigation would be given up."—*Mad. MSS.*

into view the turn that may be given to the event by the weight of Kentucky if thrown into the wrong scale, and by the proceedings of Maryland and South Carolina, if they should terminate in either a rejection or postponement of the question. The impression on Kentucky, like that on the rest of the State was at first answerable to our wishes; but, as elsewhere, the torch of discord has been thrown in and has found the materials but too inflammable. I have written several letters since my arrival to correspondents in that district, with a view to counteract anti-federal machinations. I have little expectation however that they will have much effect, unless the communications that may go from Mr. Brown in Congress, should happen to breathe the same spirit; and I am not without apprehensions that his mind may have taken an unlucky tincture from the difficulties thrown in the way of the separation of the district, as well as from some antecedent proceedings of Congress. I have taken the liberty of writing also to a friend in South Carolina on the critical importance of a right decision there to a favorable one here. The inclosed letter which I leave unsealed will shew you that I am doing the same with respect to Maryland. Will you be so good as to put a wafer in it and to send it to the post office for George Town, or to change the address to Annapolis, if you should have reason to conclude that Mr. Carrol will be there? I have written a similar letter to Doc^r^ McHenry. The difference between even a postponement and adoption in Mary-

land, may in the nice balance of parties here, possibly give a fatal advantage to that which opposes the Constitution.

I have done nothing yet in preparing answers to the queries. As facts are to be ascertained as well as opinions formed delay will be of course counted upon.

With every sentiment of respect and attachment
I remain Dear Sir,
Your Obedient & humble Servt

TO EDMUND RANDOLPH. MAD. MSS.

ORANGE, April 10th, 1788.

MY DEAR FRIEND,

Since I got home which was on the day preceding our election, I have received your favor of the 29th of Febv, which did not reach New York before I had left it.

I view the amendments of Massachusetts pretty nearly in the same light that you do. They were meant for the people at large, not for the minority in the Convention. The latter were not affected by them; their objections being levelled against the very essence of the proposed Government. I do not see that the 2d amendment,[1] if I understand its scope, can be more exceptionable to the S. Sts than the others. I take it to mean that the number of Reps

[1] "That there shall be one representative to every thirty thousand persons according to the Census mentioned in the Constitution until the whole number of Representatives amounts to two hundred."—*Documentary History of the Constitution*, ii., 94.

shall be limited to 200. who will be apportioned from time to time according to a census; not that the apportionment first made when the Rep.s amount to that number shall be perpetual. The 9.th amendment [1] I have understood was made a very serious point of by S. Adams.

I do not know of anything in the new Constitution that can change the obligations of the public with regard to the old money. The principle on which it is to be settled, seems to be equally in the power of that as of the existing one. The claim of the Indiana Company cannot I should suppose be any more validated by the new System, than that of all the creditors and others who have been aggrieved by unjust laws. You do not mention what part of the Constitution, could give colour to such a doctrine. The condemnation of retrospective laws, if that be the part, does not appear to me, to admit on any principle of such a retrospective construction. As to the religious test, I should conceive that it can imply at most nothing more than that without that exception, a power would have been given to impose an oath involving a religious test as a qualification for office. The constitution of necessary offices being given to the Congress, the proper qualifications seem to be evidently involved. I think too there are several other satisfactory points of view in which the exception might be placed.

[1] "Congress shall at no time consent that any person holding an office of trust or profit under the United States shall accept of a title of nobility or any other title or office from any King, prince or foreign state."—*Documentary History of the Constitution*, ii., 95.

I shall be extremely happy to see a coalition among all the real federalists. Recommendatory alterations are the only ground that occurs to me. A conditional ratification or a second convention appears to me utterly irreconcileable in the present state of things with the dictates of prudence and safety. I am confirmed, by a comparative view of the publications on the subject, and still more of the debates in the several conventions, that a second experiment would be either wholly abortive, or would end in something much more remote from your ideas and those of others who wish a salutary Government, than the plan now before the public. It is to be considered also that besides the local & personal pride that w^d^ stand in the way, it could not be a very easy matter to bring about a reconsideration and rescision of what will certainly have been done in six and probably eight States, and in several of them by unanimous votes. Add to all this the extreme facility with which those who secretly aim at disunion (and there are probably some such in most if not all the States) will be able to carry on their schemes, under the mask of contending for alterations popular in some places and known to be inadmissible in others. Every danger of this sort might be justly dreaded from such men as this State & N. York only could furnish, playing for such a purpose into each others hands. The declaration of H——y, mentioned in your letter, is a proof to me that desperate measures will be his game. If report does not more than usually exaggerate Mason also is ripening

fast for going every length.[1] His licentiousness of animadversion it is said, no longer spares even the *moderate opponents* of the Constitution.

TO THOMAS JEFFERSON. MAD. MSS.

DEAR SIR, VIRGINIA ORANGE, April 22, 1788.

Being just acquainted by letter from President Griffin that Mr. Paradise is in N. York and proposes to sail on the first packet for France I drop you a few lines which will go by that conveyance if they arrive at N. York in time; which however I do not much expect.

The proposed Constitution still engrosses the public attention. The elections for the Convention here are but just over and promulged. From the returns (excepting those from Kentucky which are not yet known,) it seems probable, though not absolutely certain that a majority of the members elect are friends to the Constitution. The superiority of abilities at least seems to lie on that side. The characters of most note which occur to me, are marshalled thus. For the Constitution, Pendleton, Wythe Blair, Innes, Marshal, Doc^{r} W. Jones, G. Nicholas, Wilson Nicholas, Gab^{l} Jones, Thos Lewis,

[1] Cyrus Griffin, New York, April 14, 1788, wrote to Madison that Madison was considered "the main pillar" in the constitution's support. ". . . in point of virtues and real abilities the federal members [of the Virginia convention] are much superior—Henry is mighty and powerful but too interested—Mason too passionate—the Governor by nature too timid and undecided—and Grayson too blustering."—*Mad. MSS.*

F. Corbin, Ralph Wormley Jr., White of Frederick, Genl Gates, Genl A. Stephens, Arch^{d} Stuart, Zach^{y} Johnson, Doc^{r} Stuart Parson Andrews, H. Lee Jr., Bushrod Washington, considered as a young gentleman of talents: Agst the Constitution, Mr. Henry, Mason, Harrison, Grayson, Tyler, M. Smith, W. Ronald, Lawson, Bland, Wm. Cabell, Dawson.

The Governor is so temperate in his opposition and goes so far with the friends of the Constitution that he cannot properly be classed with its enemies. Monroe is considered by some as an enemy; but I believe him to be a friend though a cool one.[1] There are other individuals of weight whose opinions are unknown to me. R. H. Lee is not elected. His brother, F. L. Lee is a warm friend to the Constitution, as I am told, but also is not elected. So are J^{no} & Man Page.

The adversaries take very different grounds of opposition. Some are opposed to the substance of the plan; others, to particular modifications only. Mr. H——y is supposed to aim at disunion. Col. M——n is growing every day more bitter, and outrageous in his efforts to carry his point; and will probably in the end be thrown by the violence of his passions into the politics of Mr. H——y. The preliminary question will be whether previous alterations shall be insisted on or not? Should this be carried in the affirmative, either a conditional ratification, or a proposal for a new Convention will ensue. In either event, I think the Constitution and the Union will

[1] Monroe opposed the ratification in the convention.

be both endangered. It is not to be expected that the States which have ratified will reconsider their determinations, and submit to the alterations prescribed by Virg[a]. And if a second Convention should be formed, it is as little to be expected that the same spirit of compromise will prevail in it as produced an amicable result to the first. It will be easy also for those who have latent views of disunion, to carry them on under the mask of contending for alterations popular in some but inadmissible in other parts of the U. States.

The real sense of the people of this State cannot be easily ascertained. They are certainly attached and with warmth to a continuance of the Union; and I believe a large majority of the most intelligent and independent, are equally so to the plan under consideration. On a geographical view of them, almost all the Counties in the N. Neck have elected federal Deputies. The Counties on the South side of James River have pretty generally elected adversaries to the Constitution. The intermediate district is much chequered in this respect. The Counties between the blue ridge & the Alleghany have chosen friends to the Constitution without a single exception. Those Westward of the latter have as I am informed, generally though not universally pursued the same rule. Kentucky it is supposed will be divided.

Having been in Virg[a] but a few weeks, I can give you little account of other matters, and none of your private affairs or connections, particularly of your two nephews. The Winter here as everywhere else in the

U. S., was very severe, which, added to short crops of corn, threatened a great scarcity & a high price. It is found however that neither of these evils has taken place. Corn may be purchased for 2 dollars, and even 10*s*. per barrel. Tobacco is as low at Fred^g^ as 18*s*. Per C^t^, and not higher at Richmond than 22 or 23*s*. There is at present a very promising spring especially in the article of fruit. The night before last was so cold as to produce an alarm for the vegetation of all sorts; but it does not appear that anything less vulnerable than young cucumbers had been injured.

I shall ask the favor of Mr. Griffin to send you by Mr. Paradise, or if he should be gone by some other hand, the Debates of the Conventions in Penn^a^ & Massachusetts, and any other publications worth your reading.

I am Dear Sir your Affect friend & Servt.

SPEECHES IN THE VIRGINIA CONVENTION.[1]

JUNE 5—NECESSITY FOR THE CONSTITUTION.

Mr. MADISON then arose [2]—(but he spoke so low that his exordium could not be heard distinctly). I shall not attempt

TO GEORGE WASHINGTON.

RICHMOND, June 4, 1788.

[1] DEAR SIR,—

Your favor of the 2^d^ Ult^o^ was not rec^d^ till my arrival here on monday evening. I found contrary to my expectation that not only a very full house had been made on the first day, but that it had proceeded

[2] He was first on his feet the day before (June 4), when he briefly replied to Mason, merely asserting that power to lay taxes was just, that the Constitution would not eventuate in consolidation and that representation was sufficient.

to make impressions by any ardent professions of zeal for the public welfare; we know the principles of every man will, and ought to be judged, not by his professions and declarations, but by his conduct; by that criterion I mean in common with every other member to be judged; and should it prove unfavorable to my reputation; yet, it is a criterion, from which I will by no means depart. Comparisons have

to the appointment of the President & other officers. Mr. Pendleton was put into the chair without opposition. Yesterday little more was done than settling some forms and Resolving that no question general or particular should be propounded till the whole plan should be considered & debated, clause by clause. This was moved by Col. Mason, and contrary to his expectations, concurred in by the other side. Today the discussions commenced in Committee of the whole. The Governor has declared the day of previous amendments passed, and thrown himself fully into the federal scale. Henry & Mason made a lame figure & appeared to take different and awkward ground. The federalists are a good deal elated by the existing prospect. I dare not however speak with certainty as to the decision. Kentucky has been extremely tainted, is supposed to be generally adverse, and every piece of address is going on privately to work on the local interests & prejudices of that & other quarters. In haste I am

Dr Sir yrs affect^y^.—*Wash. MSS.*

The proceedings of the Convention were reported by Robertson and published at Petersburg, Va., 1788, under the title: "Debates and other Proceedings of the Convention of Virginia, convened at *Richmond* on *Monday* the 2d day of June, 1788, for the purpose of deliberating on the Constitution recommended by the Grand Federal Convention." Elliot's *Debates* (1836), vol. iii., inaccurately reprints this volume. Hugh Blair Grigsby's "Virginia Convention of 1788," Virginia Historical Collections IX., is a skilful and valuable narrative account of the principal characters in the convention and the debates. The MS. "Journal of the Convention of Virginia" is in the Virginia State Library, but it contains none of the debates. Madison's speeches, as given by Robertson and reproduced in the text of this volume, were, he declared in after life, reported with reasonable accuracy.

The convention first met, Monday, June 1, in the State House at Richmond, but the hall was too small to accommodate the 170 delegates and the numerous spectators, and an adjournment was taken to the "New Academy on Shockoe Hill," a building erected by Chevalier Quesnay for a French-American University. See Hunt's *Life of Madison*, 148 *et seq.*

been made between the friends of this constitution, and those who oppose it: although I disapprove of such comparisons, I trust that, in points of truth, honor, candor, and rectitude of motives, the friends of this system, here, and in other states, are not inferior to its opponents. But, professions of attachment to the public good, and comparisons of parties, ought not to govern or influence us now. We ought, sir, to examine the constitution on its own merits solely: we are to enquire whether it will promote the public happiness: its aptitude to produce this desirable object, ought to be the exclusive subject of our present researches. In this pursuit, we ought not to address our arguments to the feelings and passions, but to those understandings and judgments which were selected by the people of this country, to decide this great question, by a calm and rational investigation. I hope that gentlemen, in displaying their abilities, on this occasion, instead of giving opinions, and making assertions, will condescend to prove and demonstrate, by a fair and regular discussion. It gives me pain to hear gentlemen continually distorting the natural construction of language; for it is sufficient if any human production can stand a fair discussion. Before I proceed to make some additions to the reasons which have been adduced by my honorable friend over the way, I must take the liberty to make some observations on what was said by another gentleman [Mr. Henry]. He told us, that this constitution ought to be rejected, because it endangered the public liberty, in his opinion, in many instances. Give me leave to make one answer to that observation: let the dangers which this system is supposed to be replete with, be clearly pointed out; if any dangerous and unnecessary powers be given to the general legislature, let them be plainly demonstrated, and let us not rest satisfied with general assertions of dangers, without examination. If powers be necessary, apparent danger is not a sufficient reason against conceding them. He has suggested that licentiousness, has seldom produced the loss of liberty; but that the tyranny of rulers has almost always effected it.

Since the general civilization of mankind, I believe there are more instances of the abridgment of the freedom of the people, by gradual and silent encroachments of those in power, than by violent and sudden usurpations: but, on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority have produced factions and commotions, which, in republics, have more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the sources of that diversity of sentiment which pervades its inhabitants, we shall find great danger to fear, that the same causes may terminate here, in the same fatal effects, which they produced in those republics. This danger ought to be wisely guarded against. Perhaps, in the progress of this discussion, it will appear, that the only possible remedy for those evils and means of preserving and protecting the principles of republicanism, will be found in that very system which is now exclaimed against as the parent of oppression.

I must confess, I have not been able to find his usual consistency, in the gentleman's argument on this occasion: he informs us that the people of the country are at perfect repose, that is, every man enjoys the fruits of his labor, peaceably and securely, and that every thing is in perfect tranquility and safety. I wish sincerely, sir, this were true. If this be their happy situation, why has every state acknowledged the contrary? Why were deputies from all the states sent to the general convention? Why have complaints of national and individual distresses been echoed and re-echoed throughout the continent? Why has our general government been so shamefully disgraced, and our constitution violated? Wherefore have laws been made to authorize a change, and wherefore are we now assembled here? A federal government is formed for the protection of its individual members.

Ours has attacked itself with impunity. Its authority has been disobeyed and despised. I think I perceive a glaring inconsistency in another of his arguments. He complains of this constitution, because it requires the consent of at least three-fourths of the states to introduce amendments which shall be necessary for the happiness of the people. The assent of so many, he urges as too great an obstacle, to the admission of salutary amendments, which he strongly insists, ought to be at the will of a bare majority—we hear this argument, at the very moment we are called upon to assign reasons for proposing a constitution, which puts it in the power of nine states to abolish the present inadequate, unsafe, and pernicious confederation! In the first case, he asserts, that a majority ought to have the power of altering the government, when found to be inadequate to the security of public happiness.

In the last case, he affirms that even three-fourths of the community have not a right to alter a government, which experience has proved to be subversive of national felicity! Nay, that the most necessary and urgent alterations, cannot be made without the absolute unanimity of all the states. Does not the thirteenth article of the confederation expressly require, that no alteration shall be made without the unanimous consent of all the states? Could any thing in theory, be more perniciously improvident and injudicious, than this submission of the will of the majority to the most trifling minority? Have not experience and practice actually manifested this theoretical inconvenience to be extremely impolitic? Let me mention one fact, which I conceive must carry conviction to the mind of any one—the smallest state in the union has obstructed every attempt to reform the government—that like member has repeatedly disobeyed and counteracted the general authority; nay, has even supplied the enemies of its country with provisions. Twelve states had agreed to certain improvements which were proposed, being thought absolutely necessary to preserve the existence of the

general government: but as these improvements, though really indispensable, could not by the confederation be introduced into it without the consent of every state, the refractory dissent of that little state prevented their adoption. The inconveniences resulting from this requisition, of unanimous concurrence in alterations in the confederation, must be known to every member in this convention, it is therefore needless to remind them of them. Is it not self-evident, that a trifling minority ought not to bind the majority? Would not foreign influence be exerted with facility over a small minority? Would the honorable gentleman agree to continue the most radical defects in the old system, because the petty state of Rhode Island would not agree to remove them?

He next objects to the exclusive legislation over the district where the seat of government may be fixed. Would he submit that the representatives of this state should carry on their deliberations under the control of any one member of the union? If any state had the power of legislation over the place where congress should fix the general government, this would impair the dignity, and hazard the safety of congress. If the safety of the union were under the control of any particular state, would not foreign corruption probably prevail in such a state, to induce it to exert its controlling influence over the members of the general government? Gentlemen cannot have forgotten the disgraceful insult which congress received some years ago. When we also reflect, that the previous session of particular states is necessary, before congress can legislate exclusively any where, we must, instead of being alarmed at this part, heartily approve of it.

But, the honorable member sees great danger in the provision concerning the militia: this, I conceive, to be an additional security to our liberty, without diminishing the power of the states, in any considerable degree; it appears to me so highly expedient, that I should imagine it would have found advocates even in the warmest friends of the present system: the authority of training the militia, and appointing

the officers, is reserved to the states. Congress ought to have the power of establishing an uniform discipline throughout the states; and to provide for the execution of the laws, suppress insurrections and repel invasions; these are the only cases wherein they can interfere with the militia; and the obvious necessity of their having power over them in these cases, must convince any reflecting mind. Without uniformity of discipline, military bodies would be incapable of action: without a general controlling power to call forth the strength of the union, to repel invasions, the country might be over-run, and conquered by foreign enemies. Without such a power to suppress insurrections, our liberties might be destroyed by domestic faction, and domestic tyranny be established.

The honorable member then told us, that there was no instance of power once transferred, being voluntarily renounced. Not to produce European examples, which may probably be done before the rising of this convention, have we not seen already in seven states (and probably in an eighth state) legislatures surrendering some of the most important powers they possessed? But, Sir, by this government, powers are not given to any particular set of men, they are in the hands of the people; delegated to their representatives chosen for short terms; to representatives responsible to the people, and whose situation is perfectly similar to our own; as long as this is the case we have no danger to apprehend. When the gentleman called our recollection to the usual effects of the concession of powers, and imputed the loss of liberty generally to open tyranny I wish he had gone on farther. Upon his review of history he would have found, that the loss of liberty very often resulted from factions and divisions; from local considerations, which eternally lead to quarrels, he would have found internal dissentions to have more frequently demolished civil liberty, than a tenacious disposition in rulers, to retain any stipulated powers.

(Here Mr. Madison enumerated the various means whereby nations had lost their liberties.)

The power of raising and supporting armies is exclaimed against, as dangerous and unnecessary. I wish there were no necessity of vesting this power in the general government. But, suppose a foreign nation to declare war against the United States, must not the general legislature have the power of defending the United States? Ought it to be known to foreign nations, that the general government of the United States of America has no power to raise and support an army, even in the utmost danger, when attacked by external enemies? Would not their knowledge of such a circumstance stimulate them to fall upon us? If, sir, congress be not invested with this power, any powerful nation, prompted by ambition or avarice, will be invited, by our weakness, to attack us; and such an attack, by disciplined veterans, would certainly be attended with success, when only opposed by irregular, undisciplined militia. Whoever considers the peculiar situation of this country, the multiplicity of its excellent inlets and habours, and the uncommon facility of attacking it, however much he may regret the necessity of such a power, cannot hesitate a moment in granting it. One fact may elucidate this argument. In the course of the late war, when the weak parts of the union were exposed, and many states were in the most deplorable situation, by the enemy's ravages, the assistance of foreign nations was thought so urgently necessary for our protection, that the relinquishment of territorial advantages, was not deemed too great a sacrifice for the acquisition of one ally. This expedient was admitted with great reluctance, even by those states who expected advantages from it. The crisis however at length arrived when it was judged necessary for the salvation of this country, to make certain cessions to Spain; whether wisely, or otherwise, is not for me to say; but the fact was, that instructions were sent to our representative at the court of Spain, to empower him to enter into negotiations for that purpose.—How it terminated is well known. This fact shews the extremities to which nations will go in cases of imminent danger, and

demonstrates the necessity of making ourselves more respectable. The necessity of making dangerous cessions, and of applying to foreign aid, ought to be excluded.

The honorable member then told us, that there are heart-burnings in the adopting states, and that Virginia may, if she does not come into the measure, continue in amicable confederacy with the adopting states. I wish as seldom as possible to contradict the assertions of gentlemen, but I can venture to affirm, without danger of being in an error, that there is the most satisfactory evidence, that the satisfaction of those states is increasing every day, and that, in that state, where it was adopted only by a majority of nineteen, there is not one-fifth of the people dissatisfied. There are some reasons which induce us to conclude, that the grounds of proselytism extend every where; its principles begin to be better understood; and the inflammatory violence, wherewith it was opposed by designing, illiberal, and unthinking minds begins to subside. I will not enumerate the causes from which in my conception, the heart-burnings of a majority of its opposers have originated. Suffice it to say, that in all they were founded on a misconception of its nature and tendency. Had it been candidly examined and fairly discussed, I believe, sir, that but a very inconsiderable minority of the people of the United States would have opposed it. With respect to the Swiss, which the honorable gentleman has proposed for our example, as far as historical authority may be relied on, we shall find their government quite unworthy of our imitation. I am sure if the honorable gentleman had adverted to their history and government, he never would have quoted their example here; he would have found that instead of respecting the rights of mankind, their government (at least of several of their cantons) is one of the vilest aristocracies that ever was instituted: the peasants of some of their cantons are more oppressed and degraded than the subjects of any monarch in Europe: nay, almost as much so, as those of any eastern despot. It is a novelty in politics, that from the worst of

systems the happiest consequences should ensue. Their aristocratical rigor, and the peculiarity of their situation, have so long supported their union: without the closest alliance and amity, dismemberment might follow, their powerful and ambitious neighbors would immediately avail themselves of their least jarrings. As we are not circumstanced like them, no conclusive precedent can be drawn from their situation. I trust, the gentleman does not carry his idea so far as to recommend a separation from the adopting states. This government may secure our happiness; this is at least as probable, as that it shall be oppressive. If eight states have, from a persuasion of its policy and utility, adopted it, shall Virginia shrink from it, without a full conviction of its danger and inutility? I hope she will never shrink from any duty: I trust she will not determine without the most serious reflection and deliberation.

I confess to you, sir, were uniformity of religion to be introduced by this system, it would, in my opinion, be ineligible; but I have no reason to conclude, that uniformity of government will produce that of religion. This subject is, for the honor of America, perfectly free and unshackled. The government has no jurisdiction over it—the least reflection will convince us, there is no danger to be feared on this ground.

But we are flattered with the probability of obtaining previous amendments. This calls for the most serious attention of this house. If amendments are to be proposed by one state, other states have the same right, and will also propose alterations. These cannot but be dissimilar, and opposite in their nature. I beg leave to remark, that the governments of the different states, are in many respects dissimilar, in their structure; their legislative bodies are not similar—their executive, are more different. In several of the states the first magistrate is elected by the people at large—in others, by joint ballot of the members of both branches of the legislature —and in others, in other different manners. This dissimilarity has occasioned a diversity of opinion on the theory of govern-

ment, which will, without many reciprocal concessions, render a concurrence impossible. Although the appointment of an executive magistrate, has not been thought destructive to the principles of democracy in many of the states, yet, in the course of the debate, we find objections made to the federal executive: it is urged that the president will degenerate into a tyrant. I intended, in compliance with the call of the honorable member, to explain the reasons of proposing this constitution, and develop its principles; but I shall postpone my remarks, till we hear the supplement which he has informed us, he intends to add to what he has already said.

Give me leave to say something of the nature of the government, and to show that it is safe and just to vest it with the power of taxation. There are a number of opinions; but the principal question is, whether it be a federal or consolidated government: in order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is a government of a federal nature; in others it is of a consolidated nature. Even if we attend to the manner in which the constitution is investigated, ratified and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal. Who are parties to it? The people—but not the people as composing one great body; but the people as composing thirteen sovereignties: were it as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment, and as a majority, have adopted it already, the remaining states would be bound by the act of the majority, even if they unanimously reprobated it: were it such a government as it is suggested, it would be now binding on the people of this state, without having had the privilege of deliberating upon it; but, sir, no state is

bound by it, as it is, without its own consent. Should all the states adopt it, it will be then a government established by the thirteen states of America, not through the intervention of the legislatures, but by the people at large. In this particular respect the distinction between the existing and proposed governments is very material. The existing system has been derived from the dependent derivative authority of the legislatures of the states, whereas this is derived from the superior power of the people. If we look at the manner in which alterations are to be made in it, the same idea is in some degree attended to. By the new system a majority of the states cannot introduce amendments; nor are all the states required for that purpose; three-fourths of them must concur in alterations: in this there is a departure from the federal idea. The members to the national house of representatives are to be chosen by the people at large, in proportion to the numbers in the respective districts. When we come to the senate, its members are elected by the states in their equal and political capacity; but had the government been completely consolidated, the senate would have been chosen by the people in their individual capacity, in the same manner as the members of the other house. Thus it is of a complicated nature, and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well as of a mere confederacy. If Virginia was separated from all the states, her power and authority would extend to all cases: in like manner were all powers vested in the general government, it would be a consolidated government; but the powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction.

But the honorable member has satirised with peculiar acrimony, the powers given to the general government by this constitution. I conceive that the first question on this subject is, whether these powers be necessary; if they be, we are reduced to the dilemma of either submitting to the incon-

venience, or losing the union. Let us consider the most important of these reprobated powers; that of direct taxation is most generally obejcted to. With respect to the exigencies of government, there is no question but the most easy mode of providing for them will be adopted. When, therefore, direct taxes are not necessary, they will not be recurred to. It can be of little advantage to those in power, to raise money, in a manner oppressive to the people. To consult the conveniences of the people, will cost them nothing, and in many respects will be advantageous to them. Direct taxes will only be recurred to for great purposes. What has brought on other nations those immense debts, under the pressure of which many of them labor? Not the expenses of their governments, but war. If this country should be engaged in war, and I conceive we ought to provide for the possibility of such a case, how would it be carried on? By the usual means provided from year to year? As our imports will be necessary for the expenses of government and other common exigencies, how are we to carry on the means of defence? How is it possible a war could be supported without money or credit? And would it be possible for a government to have credit without having the power of raising money? No, it would be impossible for any government, in such a case, to defend itself. Then, I say, sir, that it is necessary to establish funds for extraordinary exigencies, and give this power to the general government—for the utter inutility of previous requisitions on the states is too well known. Would it be possible for those countries, whose finances and revenues are carried to the highest perfection, to carry on the operations of Government on great emergencies, such as the maintenance of a war, without an uncontrolled power of raising money? Has it not been necessary for Great Britain, notwithstanding the facility of the collection of her taxes, to have recourse very often to this and other extraordinary methods of procuring money? Would not her public credit have been ruined, if it was known that her power to raise money was limited? Has not France

been obliged, on great occasions, to use unusual means to raise funds? It has been the case in many countries, and no government can exist, unless its powers extend to make provisions for every contingency. If we were actually attacked by a powerful nation, and our general government had not the power of raising money, but depended solely on requisitions, our condition would be truly deplorable—if the revenue of this commonwealth were to depend on twenty distinct authorities, it would be impossible for it to carry on its operations. This must be obvious to every member here; I think therefore, that it is necessary for the preservation of the union, that this power shall be given to the general government.

But it is urged, that its consolidated nature, joined to the power of direct taxation, will give it a tendency to destroy all subordinate authority; that its increasing influence will speedily enable it to absorb the state governments. I cannot think this will be the case. If the general government were wholly independent of the governments of the particular states, then indeed usurpation might be expected to the fullest extent: but, sir, on whom does this general government depend? It derives its authority from these governments, and from the same sources from which their authority is derived. The members of the federal government are taken from the same men from whom those of the state legislatures are taken. If we consider the mode in which the federal representatives will be chosen, we shall be convinced, that the general, will never destroy the individual, governments; and this conviction must be strengthened by an attention to the construction of the senate. The representatives will be chosen probably under the influence of the members of the state legislatures: but there is not the least probability that the election of the latter will be influenced by the former. One hundred and sixty members represent this commonwealth in one branch of the legislature, are drawn from the people at large, and must ever possess more influence than the few men who will be elected to the general legislature.

The reasons offered on this subject, by a gentleman on the same side [Mr. Nicholas] were unanswerable, and have been so full, that I shall add but little more on the subject. Those who wish to become federal representatives, must depend on their credit with that class of men who will be the most popular in their counties, who generally represent the people in the state governments: they can, therefore, never succeed in any measure contrary to the wishes of those on whom they depend. It is almost certain, therefore, that the deliberations of the members of the federal house of representatives, will be directed to the interest of the people of America. As to the other branch, the senators will be appointed by the legislatures, and though elected for six years, I do not conceive they will so soon forget the source from whence they derive their political existence. This election of one branch of the federal by the state legislatures, secures an absolute dependence of the former on the latter. The biennial exclusion of one third, will lessen the facility of a combination, and may put a stop to intrigues. I appeal to our past experience, whether they will attend to the interests of their constituent states. Have not those gentlemen who have been honored with seats in congress, *often signalized themselves by their attachment* to their seats? I wish this government may answer the expectation of its friends, and foil the apprehension of its enemies. I hope the patriotism of the people will continue, and be a sufficient guard to their liberties. I believe its tendency will be, that the state governments will counteract the general interest, and ultimately prevail. The number of the representatives is yet sufficient for our safety, and will gradually increase—and if we consider their different sources of information, the number will not appear too small.

JUNE 7—POWER TO LAY TAXES.

Mr. MADISON.—Mr. Chairman, in considering this great subject I trust we shall find that part which gives the general

government the power of laying and collecting taxes, indispensable and essential to the existence of any efficient, or well organized system of government: if we consult reason, and be ruled by its dictates, we shall find its justification there; if we review the experience we have had, or contemplate the history of nations, here we find ample reasons to prove its expediency. There is little reason to depend for necessary supplies on a body which is fully possessed of the power of withholding them. If a government depends on other governments for its revenues: if it must depend on the voluntary contributions of its members, its existence must be precarious. A government which relies on thirteen independent sovereignties, for the means of its existence, is a solecism in theory, and a mere nullity in practice. Is it consistent with reason, that such a government can promote the happiness of any people? It is subversive of every principle of sound policy, to trust the safety of a community with a government, totally destitute of the means of protecting itself or its members. Can congress, after the repeated unequivocal proofs it has experienced of the utter inutility and inefficacy of requisitions, reasonably expect, that they would be hereafter effectual or productive? Will not the same local interests, and other causes, militate against a compliance? Whoever hopes the contrary must ever be disappointed. The effect, sir, cannot be changed without a removal of the cause. Let each county in this commonwealth be supposed free and independent; let your revenues depend on requisitions of proportionate quotas from them: let application be made to them repeatedly: is it to be presumed that they would comply, or that an adequate collection could be made from partial compliances? It is now difficult to collect the taxes from them: how much would that difficulty be enhanced, were you to depend solely on their generosity? I appeal to reason or every gentleman here, whether he is not persuaded, that the present confederation is as feeble, as the government of Virginia would be in that case, to the same reason I appeal, whether it be incompatible

with prudence to continue a government of such manifest and palpable debility.

If we recur to history, and review the annals of mankind, I undertake to say that no instance can be produced by the most learned man of any confederate government, that will justify a continuation of the present system; or that will not demonstrate the necessity of this change: and of substituting to the present pernicious and fatal plan, the system now under consideration, or one equally energetic. The uniform conclusion drawn from a review of ancient and modern confederacies, is, that instead of promoting the public happiness, or securing public tranquility, they have, in every instance, been productive of anarchy and confusion; ineffectual for the preservation of harmony, and a prey to their own dissentions and foreign invasions.

The Amphyctionic league resembled our confederation in its nominal powers; it was possessed of rather more power. The component states retained their sovereignty, and enjoyed an equality of suffrage in the federal council. But though its powers were more considerable in many respects than those of our present system; yet it had the same radical defect. Its powers were exercised over its individual members, in their political capacities. To this capital defect it owed its disorders, and final destruction. It was compelled to recur to the sanguinary coercion of war to enforce its decrees.—The struggles consequent on a refusal to obey a decree, and an attempt to enforce it, produced the necessity of applying to foreign assistance; by complying with such an application, together with his intrigues, Philip of Macedon acquired sufficient influence to become a member of the league. This artful and insidious prince, soon after became master of their liberties.

The Achean league, though better constructed than the Amphyctionic, in material respects, was continually agitated with domestic dissentions, and driven to the necessity of calling in foreign aid; this, also, eventuated in the demolition

of their confederacy. Had they been more closely united, their people would have been happier; and their united wisdom and strength, would not only have rendered unnecessary all sovereign interpositions in their affairs, but would have enabled them to repel the attack of an enemy. If we descend to more modern examples, we shall find the same evils resulting from the same sources.

The Germanic system is neither adequate to the external defence, nor internal felicity of the people; the doctrine of quotas and requisitions flourishes here. Without energy—without stability—the empire is a nerveless body. The most furious conflicts, and the most implacable animosities between its members, strikingly distinguish its history. Concert and co-operation are incompatible with such an injudiciously constructed system.

The republic of the Swiss is sometimes instanced for its stability, but even there, dissentions and wars of a bloody nature have been frequently seen between the cantons. A peculiar coincidence of circumstances contributes to the continuance of their political connection. Their feeble association owes its existence to their singular situation. There is a schism this moment, in their confederacy, which, without the necessity of uniting for their external defence, would immediately produce its dissolution.

The confederate government of Holland, is a further confirmation of the characteristic imbecility of such governments. From the history of this government we might derive lessons of the most important utility.

(Here Mr. Madison quoted sundry passages from De Witt, respecting the people of Holland, and the war which they had so long supported against the Spanish monarch: shewing the impolitic and injudicious structure of their confederacy; that it was entirely destitute of energy, because their revenues depended chiefly on requisitions; that during that long war, the provinces of Guelderland, and Overyssel had not paid their respective quotas, but had evaded, altogether, their pay-

ments; in consequence of which, two sevenths of the resources of the community had never been brought into action, nor contributed in the least toward the prosecution of the war; that the fear of pressing danger stimulated Holland and the other provinces to pay all the charges of the war; that those two provinces had continued their delinquences; that the province of Holland alone, paid more than all the rest; still those provinces who paid up their proportional shares, claimed from the failing states the amounts of their arrearages; that the most fatal consequences had nearly resulted from the difficulty of adjusting those claims; and from the extreme aversion of the delinquent states to discharge even their most solemn engagements; that there are existing controversies between the provinces on this account at present; and to add to the evils consequent upon requisitions, that unanimity and the revision and sanction of their constituents, were necessary to give validity to the decisions of the states general.)

Mr. MADISON then added—that these radical defects in their confederacy must have dissolved their association long ago, were it not for their peculiar position—circumscribed in a narrow territory; surrounded by the most powerful nations in the world; possessing peculiar advantages from their situation; an extensive navigation and a powerful navy—advantages which it was clearly the interest of those nations to diminish or deprive them of; and that their late unhappy dissentions were manifestly produced by the vices of their system. He then continued—We may derive much benefit from the experience of that unhappy country. Governments destitute of energy, will ever produce anarchy. These facts are worthy the most serious consideration of every gentleman here. Does not the history of these confederacies coincide with the lesson drawn from our own experience? I most earnestly pray that America may have sufficient wisdom to avail herself of the instructive information she may derive from a contemplation of the sources of their misfortunes, and that she may escape a similar fate by avoiding the causes from which their infelicity

sprung. If the general government is to depend on the voluntary contribution of the states for its support, dismemberment of the United States may be the consequence. In cases of eminent danger, the states more immediately exposed to it, would only exert themselves—those remote from it, would be too supine to interest themselves warmly in the fate of those whose distresses they did not immediately perceive. The general government ought, therefore, to be empowered to defend the whole union.

Must we not suppose, that those parts of America which are most exposed, will first be the scenes of war? Those nations whose interest is incompatible with an extension of our power, and who are jealous of our resources to become powerful and wealthy, must naturally be inclined to exert every means to prevent our becoming formidable. Will they not be impelled to attack the most exposed parts of the union? Will not their knowledge of the weakness of our government stimulate them the more readily to such an attack? Those parts to which relief can be afforded with most difficulty, are the extremities of the country, and will be the first objects of our enemies. The general government having no resources beyond what are adequate to its existing necessities, will not be able to afford any effectual succor to those parts which may be invaded.

America, in such a case, would palpably perceive the danger and folly of withholding from the union, a power sufficient to protect the whole territory of the United States. Such an attack is far from improbable, and if it be actually made, it is difficult to conceive a possibility of escaping the catastrophe of a dismemberment. On this subject we may receive an estimable and instructive lesson from an American confederacy; from an example which has happened in our country and which applies to us with peculiar force, being most analogous to our situation. I mean that species of association or union which subsisted in New England. The colonies of Massachusetts, Bristol, Connecticut, and New Hampshire, were confederated together.

The object of that confederacy was primarily to defend themselves against the inroads and depredations of the Indians. They had a common council, consisting of deputies from each party, with an equality of suffrage in their deliberations. The general expenditures and charges were to be adequately defrayed. Its powers were very similar to those of the confederation. Its history proves clearly, that a government founded on such principles must ever disappoint the hopes of those who expect its operation to be conducive to the public happiness.

There are facts on record to prove, that instead of answering the end of its institution, or the expectation of its framers, it was violated with impunity, and only regarded when it coincided perfectly with the views and immediate interests of their respective parties.

The strongest member of the union availed itself of its circumstances to infringe their confederacy. Massachusetts refused to pay its quotas. In the war between England and Holland, it was found particularly necessary to make exertions for the protection of that country.

Massachusetts being then more powerful and less exposed than the other colonies, refused its contributions to the general defence. In consequence of this, the common council remonstrated against the council of Massachusetts. This altercation terminated in the dissolution of their union. From this brief account of a system, perfectly resembling our present one we may easily divine the inevitable consequences of a longer adherence to the latter.

(Mr. Madison then recapitulated many instances of the prevalent persuasion of the wisest patriots of the states, that the safety of all America depended on union; and that the government of the U. States must be possessed of an adequate degree of energy, or that otherwise their connection could not be justly denominated an union. He likewise enumerated the expedients that had been attempted by the people of America to form an intimate association, from the meeting at New York

in the year 1754, downwards that their sentiments on this subject had been uniform, both in their colonial and independent conditions: and that a variety of courses had hitherto prevented the adoption of an adequate system.)

He then continued thus—If we take experience for our guide, we shall find still more instructive direction on this subject. The weakness of the existing articles of the union, shewed itself during the war. It has manifested itself since the peace, to such a degree, as admits of no doubt to a rational, intelligent, and unbiassed mind, of the necessity of alteration—nay, this necessity is obvious to all America—it has forced itself on the minds of the people. The committee has been informed, that the confederation was not completed till the year 1781, when a great portion of the war was ended, consequently no part of the merit of the antecedent operations of the war could justly be attributed to that system. Its debility was perceived almost as soon as it was put in operation. A recapitulation of the proofs which have been experienced of its inefficacy is necessary. It is most notorious, that feebleness universally marked its character. Shall we be safe in another war in the same situation? That instrument required the voluntary contributions of the states, and thereby sacrificed some of our best privileges. The most intolerable and unwarrantable oppressions were committed on the people during the late war. The gross enormity of those oppressions might have produced the most serious consequences, were it not for the spirit of liberty, which preponderated against every consideration.

A scene of injustice, partiality and oppression, may bring heavenly vengeance on any people. We are now by our suffering expiating the crimes of the otherwise glorious revolution. Is it not known to every member of this committee, that the great principles of a free government, were reversed through the whole progress of that scene? Was not every state harrassed? Was not every individual oppressed and subjected to repeated distresses? Was this right? Was it a

proper form of government, that warranted, authorized, or overlooked, the most wanton deprivation of property? Had the government been vested with complete power to procure a regular and adequate supply of revenue, those oppressive measures would have been unnecessary. But, sir, can it be supposed that a repetition of such measures would ever be acquiesced in? Can a government that stands in need of such measures secure the liberty or promote the happiness or glory of any country? If we do not change this system, consequences must ensue that gentlemen do not now apprehend. If other testimony were necessary, I might appeal to that which I am sure is very weighty, but which I mention with reluctance. At the conclusion of the war, the man who had the most extensive acquaintance with the nature of the country, who well understood its interests, and who had given the most unequivocal and most brilliant proofs of his attachment to its welfare—when he laid down his arms, wherewith he had so nobly and successfully defended his country publicly testified his disapprobation of the present system; and suggested that some alteration was necessary to render it adequate to the security of our happiness. I did not introduce that great name to bias any gentleman here. Much as I admire and revere the man, I consider these members as not to be actuated by the influence of any man; but I introduced him as a respectable witness to prove that the articles of the confederation were inadequate, and that we must resort to something else. His modesty did not point out what ought to be done, but said, that some great change was necessary. But, sir, testimony if wished for, may be found in abundance, and numerous conclusive reasons urged for this change. Experience was daily producing such irresistible proofs of the defects of this system, this commonwealth was induced to exert her influence to meliorate it: she began that noble work, in which I hope she will persist: she proposed to revise it—her proposition met with that concurrence, which that of a respectable party will always meet. I am sure if demon-

stration were necessary on the part of this commonwealth, reasons have been abundantly heard in the course of this debate, manifold and cogent enough, not only to operate conviction; but to disgust an attentive hearer. Recollect the resolution of the year 1784. It was then found that the whole burthen of the union was sustained by a few states. This state was likely to be saddled with a very disproportionate share. That expedient was proposed (to obviate this inconvenience) which has been placed in its true light. It has been painted in sufficient horrors by the honorable gentleman who spoke last.

I agree with the honorable gentleman, Mr. Henry, that national splendour and glory are not our objects—but does he distinguish between what will render us secure and happy at home, and what will render us respectable abroad? If we be free and happy at home, we shall be respectable abroad.

The confederation is so notoriously feeble, that foreign nations are unwilling to form any treaties with us—they are apprised that our general government cannot perform any of its engagements; but, that they may be violated at pleasure by any of the states. Our violation of treaties already entered into, proves this truth unequivocally. No nation will, therefore, make any stipulations with congress, conceding any advantages of importance to us: they will be the more averse to entering into engagements with us, as the imbecility of our government enables them to derive many advantages from our trade, without granting us any return. But were this country united by proper bands, in addition to other great advantages, we could form very beneficial treaties with foreign states. But this can never happen without a change in our system. Were we not laughed at by the minister of that nation, from which we may be able yet to extort some of the most salutary measures for this country? Were we not told that it was necessary to temporize till our government acquired consistency? Will any nation relinquish national advantages to us? You will be greatly disappointed, if you

expect any such good effects from this contemptible system. Let us recollect our conduct to that country from which we have received the most friendly aid. How have we dealt with that benevolent ally? Have we complied with our most sacred obligations to that nation? Have we paid the interest punctually from year to year? Is not the interest accumulating, while not a shilling is discharged of the principal? The magnanimity and forbearance of that ally are so great, that she has not called upon us for her claims, even in her own distress and necessity. This, sir, is an additional motive to increase our exertions. At this moment of time a very considerable amount is due from us to that country and others.

(Here Mr. Madison mentioned the amount of the debts due to different foreign nations.)

We have been obliged to borrow money, even to pay the interest of our debts. This is a ruinous and most disgraceful expedient. Is this a situation on which America can rely for security and happiness? How are we to extricate ourselves? The honorable member told us, we might rely on the punctuality and friendship of the states, and that they will discharge their quotas for the future. The contributions of the states have been found inadequate from the beginning, and are diminishing instead of increasing. From the month of June 1787, till June 1788, they have only paid 276,641 dollars into the federal treasury for the purposes of supporting the national government, and discharging the interest of the national debts: a sum so very insufficient, that it must greatly alarm the friends of their country. Suggestions and strong assertions dissipate before these facts. I shall no longer fatigue the committee at this time, but will resume the subject as early as I can.

JUNE 11—POWER TO LAY TAXES.[1]

Mr. MADISON.—Mr. Chairman, it was my purpose to resume before now, what I had left unfinished, concerning the necessity of a radical change of our system. The intermission which has taken place discontinued the progress of the argument, and has given opportunity to others to advance arguments on different parts of the plan. I hope we shall steer our course in a different manner from what we have hitherto done. I presume that vague discourses and mere sports of fancy, not relative to the subject at all, are very improper on this interesting occasion. I hope these will be no longer attempted, but that we shall come to the point. I trust we shall not go out of order, but confine ourselves to the clause under consideration. I beg gentlemen would observe this rule. I shall endeavor not to depart from it myself.

The subject of direct taxation is perhaps one of the most

[1] The notes for this speech are found in the Mad. MSS.:

Direct taxation necessary—practicable—safe—œconomical

I. necessary

1. for punctuality—credit—suppose war & most to be feared &c—free ships free goods.
2. Conditi^{n} tax^{n} produce failure from
3. distrust of concurrent exertions am^{g} Sts who will deliberate
4. Some Sts less in danger & less willing to exert.
5. Contests between Cong^{s} & Sts.
6. effect of punishment & St. on side of people. Represent^{s} of particular oppose 1st in Cong^{s} then elsewhere.
7. case of partial payments within time.
8. prevents whole burden on imposts & S. Sts.
9. imposts not en^{g} now—& decrease *in war*—& *manufactures*
10. secure responsibility—when not to fix sum only—but find means

II. practicability.

1. 10 or 15 men eno. for this State
2. aid of State laws—
3. increase of mutual knowledge.
4. land—pole—property
5. uniformity not essential—Eng^{d} & Scot^{d}—local customs.
6. concurrent collections—as both act for people.

important that can possibly engage our attention, or that can be involved in the discussion of this question. If it be, to be judged by the comments made upon it, by the opposers and favorers of the proposed system, it requires a most clear and critical investigation. The objections against the exercise of this power by the general government as far as I am able to comprehend them, are founded upon the supposition of its being unnecessary, impracticable, unsafe and accumulative of expense. I shall therefore consider, 1st, how far it may be necessary; 2d, how far it may be practicable; 3dly, how far it may be safe, as well with respect to the public liberty at large, as to the state legislatures; and 4thly, with respect to economy. First, then, is it necessary? I must acknowledge that I concur in opinion with those gentlemen who told you that this branch of revenue was essential to the salvation of the union. It appears to me necessary, in order to secure that punctuality which is necessary in revenue matters. Without punctuality individuals will give it no confidence, without which it cannot get resources. I beg gentlemen to consider the situation of this country, if unhappily the government were to be deprived of this power. Let us suppose for a

III. Safe.
1. *to* public liberty—Rep^{s} of large distr^{cts} as London &c.
2. comparative dependence & influence of Genl & St. Gov^{ts}
3. No member of St. Gov^{t} elected by Genl Gov^{t}
4. Presid^{t} elected under influence of St Legisl^{re}
5. Senate app^{d} by St: Legisl^{re}—Col. Monroe's idea & inconsistency here—
6. H. of Rep^{s} attached to Sts more ye Senate—
7. people of St^{s} attached to St. Gov^{t} —
8. compare n^{o} of appointm^{s}
9. compare powers—
10. powers of Cong^{s} same only as Confed^{n} substantiated.—care of Cong^{s} [illegible] paper money

IV. Œconomical.
1. as to customs
2. as in place of 1500. or 2000. members
3—as less mutable—& less exposed to speculators &c.

moment that one of those powers which may be unfriendly to us, should take advantage of our weakness, which they will be more ready to do when they know the want of this resource in our government. Suppose it should attack us, what forces could we oppose to it? Could we find safety in such forces as we could call out? Could we call forth a sufficient number, either by draughts, or any other way, to repel a powerful enemy? The inability of the government to raise and support regular troops, would compel us to depend on militia.

It would be then necessary to give this power to the government, or run the risk of national annihilation. It is my firm belief, that if a hostile attack were made this moment on the United States, it would flash conviction on the minds of the citizens of the United States, of the necessity of vesting the government with this power, which alone can enable it to protect the community. I do not wish to frighten the members into a concession of this power, but to bring to their minds those considerations which demonstrate its necessity. If we were secured from the possibility, or probability of danger, it might be unnecessary. I shall not review that concourse of dangers which may probably arise at remote periods of futurity, nor all those which we have immediately to apprehend, for this would lead me beyond the bounds which I prescribed myself. But I will mention one single consideration, drawn from fact itself. I hope to have your attention.

By the treaty between the United States and his most Christian majesty, among other things it is stipulated, that the great principle on which the armed neutrality in Europe was founded, should prevail in case of future wars. The principle is this, that free ships shall make free goods, and that vessels and goods shall be both free from condemnation. Great Britain did not recognize it. While all Europe was against her, she held out without acting to it. It has been considered for sometime past, that the flames of war already kindled, would spread, and that France and England were likely to draw those swords which were so recently put up.

This is judged probable. We should not be surprised in a short time, to consider ourselves as a neuteral nation—France on one side, and Great Britain on the other. What is the situation of America? She is remote from Europe, and ought not to engage in her politics or wars. The American vessels, if they can do it with advantage, may carry on the commerce of the contending nations. It is a source of wealth which we ought not to deny to our citizens. But, Sir, is there not infinite danger, that in despite of all our caution we shall be drawn into the war? If American vessels have French property on board, Great Britain will seize them. By this means we shall be obliged to relinquish the advantage of a neutral nation, or be engaged in a war.

A neutral nation ought to be respectable, or else it will be insulted and attacked. America in her present impotent situation would run the risk of being drawn in as a party in the war, and lose the advantage of being neutral. Should it happen that the British fleet should be superior, have we not reason to conclude, from the spirit displayed by that nation to us and to all the world, that we should be insulted in our own ports, and our vessels seized? But if we be in a respectable situation—if it be known that our government can command the whole resources of the union, we shall be suffered to enjoy the great advantages of carrying on the commerce of the nations at war: for none of them would be willing to add us to the number of their enemies. I shall say no more on this point, there being others which merit your consideration.

The expedient proposed by the gentlemen opposed to this clause, is, that requisitions shall be made, and if not complied with in a certain time, that then taxation shall be recurred to. I am clearly convinced, that whenever requisitions shall be made, they will disappoint those who put their trust in them One reason to prevent the concurrent exertions of all the states, will arise from the suspicion, in some states, of delinquency in others. States will be governed by the motives that actuate individuals.

When a tax is in operation in a particular state, every citizen, if he knows of the energy of the laws to enforce payment, and that every other citizen is performing his duty, will cheerfully discharge his duty; but were it known that the citizens of one district were not performing their duty, and that it was left to the policy of the government to make them come up with it, the other districts would be very supine and careless in making provisions for payment. Our own experience makes the illustration more natural. If requisitions be made on thirteen different states, when one deliberates on the subject, she will know that all the rest will deliberate upon it also. This, Sir, has been a principal cause of the inefficacy of requisitions heretofore, and will hereafter produce the same evil. If the legislatures are to deliberate on this subject, (and the honorable gentleman opposed to this clause, thinks their deliberation necessary) is it not presumable, that they will consider peculiar local circumstances? In the general council, on the contrary, the sense of all America would be drawn to a single point. The collective interest of the union at large, will be known and pursued. No local views will be permitted to operate against the general welfare. But when propositions would come before a particular state, there is every reason to believe, that qualifications of the requisitions would be proposed—compliance might be promised, and some instant remittances might be made. This will cause delays, which in the first instance will produce disappointment. This also will make failures every where else. This I hope will be considered with the attention it deserves. The public creditors will be disappointed, and more pressing. Requisitions will be made for purposes equally pervading all America; but the exertions to make compliances, will probably be not uniform in the states. If requisitions be made for future occasions, for putting the states in a state of military defence, or to repel an invasion, will the exertions be uniform and equal in all the states? Some parts of the United States are more exposed than others. Will the least exposed states exert

themselves equally? We know that the most exposed will be more immediately interested, and will make less sacrifices in making exertions. I beg gentlemen to consider that this argument will apply with most effect to the states which are most defenceless and exposed. The southern states are most exposed, whether we consider their situation, or the smallness of their population. And there are other circumstances which render them still more vulnerable, which do not apply to the northern states. They are therefore more interested in giving the government a power to command the whole strength of the union in cases of emergency. Do not gentlemen conceive this mode of obtaining supplies from the states, will keep alive animosities between the general government and particular states? Where the chances of failures are so numerous as thirteen, by the thirteen states, disappointment in the first place, and consequent animosity must inevitably take place.

Let us consider the alternatives proposed by gentlemen, instead of the power of laying direct taxes. After the states shall have refused to comply, weigh the consequences of the exercise of this power by congress. When it comes in the form of a punishment, great clamours will be raised among the people against the government; hatred will be excited against it. It will be considered as an ignominious stigma on the state. It will be considered at least in this light by the state where the failure is made, and these sentiments will no doubt be diffused through the other states. Now let us consider the effect, if collectors are sent where the state governments refuse to comply with requisitions. It is too much the disposition of mankind not to stop at one violation of duty. I conceive that every requisition that will be made on my part of America, will kindle a contention between the delinquent member, and the general government. Is there no reason to suppose divisions in the government (for seldom does any thing pass with unanimity) on the subject of requisitions? The parts least exposed will oppose those measures which may be adopted for the defence of the weakest parts. Is there no reason to

presume, that the representatives from the delinquent state will be more likely to foster disobedience to the requisitions of the government, than study to recommend them to the public?

There is in my opinion, another point of view in which this alternative will produce great evil. I will suppose, what is very probable, that partial compliances will be made. A difficulty here arises which fully demonstrates its impolicy. If a part be paid, and the rest withheld, how is the general government to proceed? They are to impose a tax, but how shall it be done in this case? Are they to impose it by way of punishment, on those who have paid, as well as those who have not? All these considerations taken into view (for they are not visionary or fanciful speculations) will, perhaps, produce this consequence. The general government to avoid those disappointments which I first described, and to avoid the contentions and embarrassments which I last described, will in all probability, throw the public burdens on those branches of revenue which will be more in their power. They will be continually necessitated to augment the imposts. If we throw a disproportion of the burdens on that side, shall we not discourage commerce; and suffer many political evils? Shall we not increase that disproportion on the southern states, which for sometime will operate against us? The southern states, from having fewer manufactures, will import and consume more. They will therefore pay more of the imposts. The more commerce is burdened, the more the disproportion will operate against them. If direct taxation be mixed with other taxes, it will be in the power of the general government to lessen that inequality. But this inequality will be increased to the utmost extent, if the general government have not this power.

There is another point of view in which this subject affords us instruction. The imports will decrease in time of war. The honorable gentleman who spoke yesterday, said, that the imposts would be so productive, that there would be no occasion of laying taxes. I will submit two observations to

him and the committee. First: in time of war the imposts will be less, and as I hope we are considering a government for a perpetual duration, we ought to provide for every future contingency. At present our importations bear a full proportion to the full amount of our sales, and to the number of our inhabitants; but when we have inhabitants enough, our imposts will decrease; and as the national demands will increase with our population, our resources will increase as our wants increase. The other consideration which I will submit on this part of the subject is this:—I believe that it will be found in practice, that those who fix the public burdens, will feel a greater degree of responsibility when they are to impose them on the citizens immediately, than if they were to say what sum should be paid by the states. If they exceed the limits of propriety, universal discontent and clamour will arise. Let us suppose they were to collect the taxes from the citizens of America—would they not consider their circumstances? Would they not attentively consider what could be done by the citizens at large? Were they to exceed in their demands, what were reasonable burdens, the people would impute it to the right source, and look on the imposers as odious.

When I consider the nature of the various objections brought against this clause, I should be led to think, that the difficulties were such, that gentlemen would not be able to get over them, and that the power, as defined in the plan of the convention, was impracticable. I shall trouble them with a few observations on that point:

It has been said that ten men deputed from this state, and others in proportion from other states, will not be able to adjust direct taxes, so as to accommodate the various citizens in thirteen states.

I confess I do not see the force of this observation. Could not ten intelligent men, chosen from ten districts from this state, lay direct taxes on a few objects in the most judicious manner? It is to be conceived, that they would be acquainted with the situation of different citizens of this country. Can any one

divide this state into ten districts so as not to contain men of sufficient information? Could not one man of knowledge be found in a district? When thus selected, will they not be able to carry their knowledge into the general council? I may say with great propriety, that the experience of our own legislature demonstrates the competency of congress to lay taxes wisely. Our assembly consists of considerably more than a hundred; yet from the nature of the business, it devolves on a much smaller number. It is through their sanction, approved of by all the others. It will be found that there are seldom more than ten men who rise to high information on this subject. Our federal representatives, as has been said by the gentleman [Mr. Marshall] who entered into the subject with a great deal of ability, will get information from the state governments. They will be perfectly well informed of the circumstances of the people of the different states, and the mode of taxation that would be most convenient for them, from the laws of the states. In laying taxes, they may even refer to the state system of taxation. Let it not be forgotten, that there is a probability, that that ignorance which is complained of in some parts of America, will be continually diminishing. Let us compare the degree of knowledge which the people had in time past to their present information. Does not our own experience teach us, that the people are better informed than they were a few years ago? The citizen of Georgia knows more now of the affairs of New Hampshire, than he did before the revolution, of those of South Carolina. When the representatives from the different states are collected together, to consider this subject, they will interchange their knowledge with one another, and will have the laws of each state on the table. Besides this, the intercourse of the states will be continually increasing. It is now much greater than before the revolution. My honorable friend, over the way [Mr. Monroe] yesterday, seemed to conceive, as an insuperable objection, that if land were made the particular object of taxation, it would be unjust, as it would exonerate

the commercial part of the community—that if it were laid on trade, it would be unjust in discharging the landholders; and that any exclusive selection would be unequal and unfair. If the general government were tied down to one object, I confess the objection would have some force in it. But if this be not the case, it can have no weight. If it should have a general power of taxation, they could select the most proper objects, and distribute the taxes in such a manner, as that they should fall in a due degree on every member of the community. They will be limited to fix the proportion of each state, and they must raise it in the most convenient and satisfactory manner to the public.

The honorable member considered it as another insuperable objection, that uniform laws could not be made for thirteen states, and that dissonance would produce inconvenience and oppression. Perhaps it may not be found, on due enquiry, to be so impracticable as he supposes. But were it so, where is the evil of different states, to raise money for the general government? Where is the evil of such laws? There are instances in other countries, of different laws operating in different parts of the country, without producing any kind of opposition. The revenue laws are different in England and Scotland in several respects. Their laws relating to customs excises and trade, are similar; but those respecting direct taxation are dissimilar. There is a land tax in England, and a land tax in Scotland, but the laws concerning them are not the same. It is much heavier in proportion in the former than in the latter. The mode of collection is different—yet this is not productive of any national inconvenience. Were we to conclude from the objections against the proposed plan, this dissimilarity, in that point alone, would have involved those kingdoms in difficulties. In England itself, there is a variety of different laws operating differently in different places. I will make another observation on the objection of my honorable friend. He seemed to conclude, that concurrent collections under different authorities, were not reducible

to practice. I agree that were they independent of the people, the argument would be good. But they must serve one common master. They must act in concert, or the defaulting party must bring on itself the resentment of the people. If the general government be so constructed, that it will not dare to impose such burdens, as will distress the people, where is the evil of its having a power of taxation concurrent with the states? The people would not support it, were it to impose oppressive burdens. Let me make one more comparison of the state governments, to this plan. Do not the states impose taxes for local purposes? Does the concurrent collection of taxes, imposed by the legislatures for general purposes, and of levies laid by the counties for parochial and county purposes, produce any inconvenience or oppression? The collection of these taxes is perfectly practicable, and consistent with the views of both parties. The people at large are the common superior of the state governments, and the general government. It is reasonable to conclude, that they will avoid interferences for two causes—to avoid public oppression, and to render the collections more productive. I conceive they will be more likely to produce disputes, in rendering it convenient for the people, than run into interfering regulations.

In the third place I shall consider, whether the power of taxation to be given the general government be safe: and first, whether it be safe as to the public liberty in general. It would be sufficient to remark, that they are, because I conceive, the point has been clearly established by more than one gentleman who has spoken on the same side of the question. In the decision of this question, it is of importance to examine, whether elections of representatives by great districts of freeholders be favorable to fidelity in representatives. The greatest degree of treachery in representatives, is to be apprehended where they are chosen by the least number of electors; because there is a greater facility of using undue influence, and because the electors must be less independent. This position

is verified in the most unanswerable manner, in that country to which appeals are so often made, and sometimes instructively.

Who are the most corrupt members in parliament? Are they not the inhabitants of small towns and districts? The supporters of liberty are from the great counties. Have we not seen that the representatives of the city of London, who are chosen by such thousands of voters, have continually studied and supported the liberties of the people, and opposed the corruption of the crown? We have seen continually that most of the members in the ministerial majority are drawn from small circumscribed districts. We may therefore conclude, that our representatives being chosen by such extensive districts, will be upright and independent. In proportion as we have security against corruption in representatives we have security against corruption from every other quarter whatsoever.

I shall take a view of certain subjects which will lead to some reflections, to quiet the minds of those gentlemen who think that the individual governments will be swallowed up by the general government. In order to effect this, it is proper to compare the state governments to the general government, with respect to reciprocal dependence, and with respect to the means they have of supporting themselves, or of encroaching on one another. At the first comparison we must be struck with these remarkable facts. The general government has not the appointment of a single branch of the individual governments, or of any officers within the states, to execute their laws. Are not the states integral parts of the general government? Is not the president chosen under the influence of the state legislatures? May we not suppose that he will be complaisant to those from whom he has his appointment, and from whom he must have his re-appointment? The senators are appointed altogether by the legislatures.

My honorable friend apprehended a coalition between the president, senate, and house of representatives, against the

states. This could be supposed only from a similarity of the component parts.

A coalition is not likely to take place, because its component parts are heterogeneous in their nature. The house of representatives is not chosen by the state governments, but under the influence of those who compose the state legislature. Let us suppose ten men appointed to carry the government into effect, there is every degree of certainty, that they would be indebted for their re-election to the members of the legislatures. If they derive their appointment from them, will they not execute their duty to them? Besides this, will not the people (whose predominant interest will ultimately prevail) feel great attachment to the state legislatures? They have the care of all local interests—those familiar domestic objects, for which men have the strongest predilection. The general government on the contrary, has the preservation of the aggregate interest of the union—objects, which being less familiar, and more remote from men's notice have a less powerful influence on their minds. Do we not see great and natural attachments arising from local considerations? This will be the case in a much stronger degree in the state governments, than in the general government. The people will be attached to their state legislatures from a thousand causes; and into whatever scale the people at large will throw themselves, that scale will preponderate.

Did we not perceive, in the early stages of the war, when congress was the idol of America, and when in pursuit of the object most dear to America, that they were attached to their states? Afterwards the whole current of their affection was to the states, and would be still the case, were it not for the alarming situation of America.

At one period of the congressional history, they had the power to trample on the states. When they had that fund of paper money in their hands, and could carry on all their measures without any dependence on the states, was there any disposition to debase the state governments? All that

municipal authority which was necessary to carry on the administration of the government, they still retained unimpaired. There was no attempt to diminish it.

I am led by what fell from my honorable friend yesterday to take this supposed combination in another view. Is it supposed, that the influence of the general government will facilitate a combination between the members? Is it supposed, that it will preponderate against that of the state governments? The means of influence consist in having the disposal of gifts and emoluments, and in the number of persons employed by, and dependent upon a government. Will any gentleman compare the number of persons, which will be employed in the general government, with the number of those which will be in the state governments? The number of dependants upon the state governments will be infinitely greater than those on the general government. I may say with truth, that there never was a more economical government in any age or country, nor which will require fewer hands, or give less influence.

Let us compare the members composing the legislative, executive and judicial powers in the general government, with these in the states, and let us take into view the vast number of persons employed in the states; from the chief officers to the lowest, we will find the scale preponderating so much in favor of the states, that while so many persons are attached to them, it will be impossible to turn the balance against them. There will be an irresistible bias towards the state governments.

Consider the number of militia officers, the number of justices of the peace, the number of the members of the legislatures, and all the various officers for districts, towns and corporations, all intermixing with, and residing among the people at large. While this part of the community retains their affection to the state governments, I conceive that the fact will be, that the state governments, and not the general government, will preponderate. It cannot be contradicted that they have

more extensive means of influence. I have my fears as well as the honorable gentleman—but my fears are on the other side. Experience, I think, will prove (though there be no infallible proof of it here) that the powerful and prevailing influence of the states, will produce such attention to local considerations, as will be inconsistent with the advancement of the interest of the union. But I choose rather to indulge my hopes than fears, because I flatter myself, if inconveniences should result from it, that the clause which provides amendments, will remedy them. The combination of powers vested in those persons, would seem conclusive in favor of the states.

The powers of the general government relate to external objects, and are but few. But the powers in the states relate to those great objects which immediately concern the prosperity of the people. Let us observe also, that the powers in the general government are those which will be exercised mostly in time of war, while those of the state governments will be exercised in time of peace. But I hope the time of war will be little, compared to that of peace. I should not complete the view which ought to be taken of this subject, without making this additional remark, that the powers vested in the proposed government, are not so much an augmentation of powers in the general government, as a change rendered necessary, for the purpose of giving efficacy to those which were vested in it before. It cannot escape any gentleman, that this power in theory, exists in the confederation as fully as in this constitution. The only difference is this, that now they tax states, and by this plan they will tax individuals. There is no theoretic difference between the two. But in practice there will be an infinite difference between them. The one is an ineffectual power: the other is adequate to the purpose for which it is given. This change was necessary for the public safety.

Let us suppose, for a moment, that the acts of congress requiring money from the states, had been as effectual as the

paper on the table—suppose all the laws of congress had complete compliance, will any gentleman say, that as far as we can judge from past experience, the state governments would have been debased, and all consolidated and incorporated in one system? My imagination cannot reach it. I conceive, that had those acts that effect which all laws ought to have, the states would have retained their sovereignty.

It seems to be supposed, that it will introduce new expenses and burdens on the people. I believe it is not necessary here to make a comparison between the expenses of the present and of the proposed government. All agree that the general government ought to have power for the regulation of commerce. I will venture to say, that very great improvements, and very economical regulations will be made. It will be a principal object to guard against smuggling, and such other attacks on the revenue as other nations are subject to. We are now obliged to defend against those lawless attempts, but from the interfering regulations of different states, with little success. There are regulations in different states which are unfavorable to the inhabitants of other states, and which militate against the revenue. New York levies money from New Jersey by her imposts. In New Jersey, instead of co-operating with New York, the legislature favors violations on her regulations. This will not be the case when uniform regulations will be made.

Requisitions, though ineffectual, are unfriendly to economy. When requisitions are submitted to the states, there are near 2,500 or 3,000 persons deliberating on the mode of payment. All these, during their deliberation, receive public pay. A great proportion of every session, in every state, is employed to consider whether they will pay at all, and in what mode. Let us suppose 1500 persons are deliberating on this subject. Let any one make a calculation—it will be found that a very few days of their deliberation will consume more of the public money, than one year of that general legislature. This is not all, Mr. Chairman. When general powers will be vested in

the general government, there will be less of that mutability which is seen in the legislation of the states. The consequence will be a great saving of expense and time. There is another great advantage which I will but barely mention. The greatest calamity to which the United States can be subject, is a vicissitude of laws, and continual shifting and changing from one object to another, which must expose the people to various inconveniences. This has a certain effect, of which sagacious men always have, and always will make an advantage. From whom is advantage made? From the industrious farmers and tradesmen who are ignorant of the means of making such advantages. The people will not be exposed to these inconveniences under an uniform and steady course of legislation. But they have been so heretofore. The history of taxation of this country is so fully and well known to every member of this committee, that I shall say no more of it.

We have hitherto discussed the subject very irregularly. I dare not dictate to any gentleman, but I hope we shall pursue that mode of going through the business, which the house resolved. With respect to a great variety of arguments made use of, I mean to take notice of them when we come to those parts of the constitution to which they apply. If we exchange this mode, for the regular way of proceeding, we can finish it better in one week than one month.

JUNE 12—POWER TO LAY TAXES.

Mr. MADISON.—Mr. Chairman, finding, Sir, that the clause more immediately under consideration still meets with the disapprobation of the honorable gentleman over the way [Mr. Grayson] and finding that the reasons of the opposition as farther developed, are not satisfactory to myself and others who are in favor of the clause, I wish that it may meet with the most thorough and complete investigation. I beg the attention of the committee, in order to obviate what fell from the honorable gentleman. He set forth, that by giving up the

power of taxation, we should give up everything, and still insist on requisitions being made on the states, and then, if they be not complied with, congress shall lay direct taxes, by way of penalty. Let us consider the dilemma which arises from this doctrine. Either requisitions will be efficacious or they will not. If they will be efficacious, then I say, Sir, we gave up every thing as much as by direct taxation.

The same amount will be paid by the people as by direct taxes. If they be not efficacious, where is the advantage of this plan? In what respect will it relieve us from the inconveniences which we have experienced from requisitions? The power of laying direct taxes by the general government is supposed by the honorable gentleman to be chimerical and impracticable. What is the consequence of the alternative he proposes? We are to rely upon this power to be ultimately used as a penalty to compel the states to comply. If it be chimerical and impracticable, in the first instance, it will be equally so when it will be exercised as a penalty. A reference was made to concurrent executions as an instance of the possibility of interference between the two governments.

(Here Mr. Madison spoke so low that he could not be distinctly heard.)

This has been experienced under the state governments without involving any inconvenience. But it may be answered, that under the state governments, concurrent executions cannot produce the inconvenience here dreaded, because they are executed by the same officer. It is not in the power of the general government to employ the state officers. Is nothing to be left to future legislation, or must every thing be immutably fixed in the constitution? Where exclusive power is given to the union, there can be no interference. Where the general and state legislatures have concurrent power, such regulations will be made, as shall be found necessary to exclude interferences and other inconveniences. It will be their interest to make regulations.

It has been said, that there is no similarity between petty

corporations and independent states. I admit that in many points of view there is a great dissimilarity, but in others, there is a striking similarity between them, which illustrates what is before us. Have we not seen in our own country (as has been already suggested in the course of the debates) concurrent collections of taxes going on at once, without producing any inconvenience? We have seen three distinct collections of taxes, for three distinct purposes. Has it not been possible for collections of taxes, for parochial, county and state purposes, to go on at the same time? Every gentleman must know, that this is now the case, and though there be a subordination in these cases which will not be in the general government, yet in practice it has been found, that these different collections have been concurrently carried on, with convenience to the people, without clashing with one another, and without deriving their harmony from the circumstance of being subordinate to one legislative body. The taxes will be laid for different purposes. The members of the one government as well as of the other, are the agents of, and subordinate to, the people. I conceive that the collections of the taxes of the one will not impede those of the other, and that there can be no interference. This concurrent collection appears to me neither chimerical nor impracticable.

He compares resistance of the people to collectors, to refusal of requisitions. This goes against all government. It is as much as to urge, that there should be no legislature. The gentlemen who favored us with their observations on this subject, seemed to have reasoned on a supposition, that the general government was confined by the paper on your table to lay general uniform taxes. Is it necessary that there should be a tax on any given article throughout the United States? It is represented to be oppressive, that the states who have slaves and make tobacco, should pay taxes on these for federal wants, when other states who have them not, would escape. But does the constitution on the table admit of this? On the contrary, there is a proportion to be laid on each state

according to its population. The most proper articles will be selected in each state. If one article in any state should be deficient, it will be laid on another article. Our state is secured on this foundation. Its proportion will be commensurate to its population. This is a constitutional scale, which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds. If the taxes be not uniform, and the representatives of some states contribute to lay a tax of which they bear no proportion, is not this principle reciprocal? Does not the same principle hold in our state government in some degree? It has been found inconvenient to fix on uniform objects of taxation in this state, as the back parts are not circumstanced like the lower parts of the country. In both cases the reciprocity of the principle will prevent a disposition in one part to oppress the other. My honorable friend seems to suppose that congress, by the possession of this ultimate power as a penalty, will have as much credit and will be as able to procure any sums, on any emergency, as if they were possessed of it in the first instance, and that the votes of congress will be as competent to procure loans, as the votes of the British commons. Would the votes of the British house of commons have that credit which they now have, if they were liable to be retarded on their operation, and perhaps, rendered ultimately nugatory, as those of congress must be by the proposed alternative? When their vote passes, it usually receives the concurrence of the other branch, and it is known that there is sufficient energy in the government, to carry it into effect.

But here the votes of congress are in the first place dependent on the compliance of thirteen different bodies, and after non-compliance, are liable to be opposed and defeated, by the jealousy of the states against the exercise of this power, and by the opposition of the people which may be expected, if this power be exercised by congress after partial compliances. These circumstances being known, congress could not command one shilling. My honorable friend seems to think that

we ought to spare the present generation and throw our burdens upon posterity. I will not contest the equity of this reasoning, but I must say that good policy as well as views of economy, strongly urge us even to distress ourselves to comply with our most solemn engagements. We must make effectual provision for the payment of the interest of our public debts. In order to do justice to our creditors, and support our credit and reputation, we must lodge power some where or other for this purpose. As yet the United States have not been able by any energy contained in the old system, to accomplish this end.

Our creditors have a right to demand the principal, but would be satisfied with a punctual payment of the interest. If we have been unable to pay the interest, much less shall we be able to discharge the principal. It appears to me that the whole reasoning used on this occasion shews, that we ought to adopt this system to enable us to throw our burdens on posterity. The honorable member spoke of the decemviri at Rome as having some similitude to the ten representatives who are to be appointed by this state. I can see no point of similitude here, to enable us to draw any conclusion. For what purpose were the decemviri appointed? They were invested with a plenipotentiary commission to make a code of laws. By whom were they appointed? By the people at large? My memory is not infallible, but it tells me they were appointed by the senate, I believe in the name of the people. If they were appointed by the senate, and composed of the most influential characters among the nobles, can any thing be inferred from that against our federal representatives? Who made a discrimination between the nobles and the people? The senate.

Those men totally perverted the powers which were given them for the purpose above specified, to the subversion of the public liberty. Can we suppose that a similar usurpation might be made, by men appointed in a totally different manner? As their circumstances were totally dissimilar, I conceive that

no arguments drawn from that source, can apply to this government. I do not thoroughly comprehend the reasoning of my honorable friend, when he tells us, that the federal government will predominate, and that the state interest will be lost, when at the same time he tells us, that it will be a faction of seven states. If seven states will prevail, *as states*, I conceive that state influence will prevail. If state influence under the present feeble government has prevailed, I think that a remedy ought to be introduced, by giving the general government power to suppress it.

He supposed that my argument with respect to a future war between Great Britain and France was fallacious. The other nations of Europe have acceded to that neutrality, while Great Britain opposed it. We need not expect in case of such a war, that we should be suffered to participate in the profitable emoluments of the carrying trade, unless we were in a respectable situation. Recollect the last war. Was there ever a war in which the British nation stood opposed to so many nations? All the belligerent nations in Europe, with nearly one half of the British empire, were united against it. Yet that nation, though defeated, and humbled beyond any previous example, stood out against this. From her firmness and spirit in such desperate circumstances, we may divine what her future conduct may be.

I did not contend that it was necessary for the United States to establish a navy for that sole purpose, but instanced it as one reason, out of several, for rendering ourselves respectable. I am no friend to naval or land armaments in time of peace, but if they be necessary, the calamity must be submitted to. Weakness will invite insults. A respectable government will not only entitle us to a participation of the advantages which are enjoyed by other nations but will be a security against attacks and insults. It is to avoid the calamity of being obliged to have large armaments that we should establish this government. The best way to avoid danger, is to be in a capacity to withstand it.

eyes around to be relieved from their misfortunes. It was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that for so substantial a consideration, Spain might be induced to afford decisive succour. It was opposed by the northern and eastern states. They were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the western country. But as it was, that the southern states were for it, and the eastern states opposed to it. Since obtaining that happy peace, which secures to us all our claims, this subject has been taken again into consideration, and deliberated upon in the federal government. A temporary relinquishment has been agitated. Several members from the different states, but particularly from the northern, were for a temporary surrender, because it would terminate disputes, and at the end of the short period for which it was to be given, the right would revert, of course, to those who had given it up. And for this temporary surrender some commercial advantages were offered. For my part, I consider this measure, though founded on considerations plausible and favorable, was yet not justifiable, but on grounds of inevitable necessity. I must declare in justice to many characters who were in congress, that they declared that they never would enter into the measure, unless the situation of the United States was such as could not prevent it.

I suppose that the adoption of this government will be favorable to the preservation of the right to that navigation. Emigration will be made from those parts of the United States which are settled, to those parts which are unsettled. If we afford protection to the western country, we will see it rapidly peopled. Emigrations from some of the northern states have been lately increased. We may conclude, as has been said, by a gentleman on the same side [Mr. Nicholas], that those who emigrate to that country, will leave behind them all their friends and connections as advocates for this right.

which have interrupted their tranquillity from time to time. The weakness of their confederacy produced both.

When the French arms were ready to overpower their republic, and were feeble in the means of defence, which was principally owing to the violence of parties, they then appointed a stadtholder, who sustained them. If we look at more recent events, we shall have a more pointed demonstration that their political infelicity arises from the imbecility of their government. In the late disorders the states were almost equally divided, three provinces on one side, three on the other, and the other divided. One party inclined to the Prussians, and the other to the French. The situation of France did not admit of their interposing immediately in their disputes by an army, that of the Prussians did. A powerful and large army marched into Holland and compelled the other party to surrender. We know the distressing consequences to the people. What produced those disputes and the necessity of foreign interference, but the debility of their confederacy? We may be warned by their example, and shun their fate, by removing the causes which produced their misfortunes. My honorable friend has referred to the transaction of the federal council, with respect to the navigation of the Mississippi. I wish it was consistent with delicacy and prudence to lay a complete view of the whole matter before this committee. The history of it is singular and curious, and perhaps its origin ought to be taken into consideration.

I will touch on some circumstances, and introduce nearly the substance of most of the facts relative to it, that I may not seem to shrink from explanation. It was soon perceived, sir, after the commencement of the war with Britain, that among the various objects that would affect the happiness of the people of America, the navigation of the Mississippi was one. Throughout the whole history of foreign negotiation, great stress was laid on its preservation. In the time of our greatest distresses, and particularly when the southern states were the scene of war, the southern states cast their

eyes around to be relieved from their misfortunes. It was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that for so substantial a consideration, Spain might be induced to afford decisive succour. It was opposed by the northern and eastern states. They were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the western country. But so it was, that the southern states were for it, and the eastern states opposed to it. Since obtaining that happy peace, which secures to us all our claims, this subject has been taken again into consideration, and deliberated upon in the federal government. A temporary relinquishment has been agitated. Several members from the different states, but particularly from the northern, were for a temporary surrender, because it would terminate disputes, and at the end of the short period for which it was to be given, the right would revert, of course, to those who had given it up. And for this temporary surrender some commercial advantages were offered. For my part, I consider this measure, though founded on considerations plausible and honorable, was yet not justifiable, but on grounds of inevitable necessity. I must declare in justice to many characters who were in congress, that they declared that they never would enter into the measure, unless the situation of the United States was such as could not prevent it.

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What was the cause of those states being the champions of this right when the southern states were disposed to surrender it? The preservation of this right will be for the general interest of the union. The western country will be settled from the north as well as the south, and its prosperity will add to the strength and security of the union. I am not able to recollect all those circumstances which would be necessary to give gentlemen a full view of the subject. I can only add, that I conceive that the establishment of the new government will be the best possible means of securing our rights as well in the western parts, as elsewhere. I will not sit down till I make one more observation on what fell from my honorable friend. He says, that the true difference between the states lies in this circumstance—that some are carrying states, and others productive, and that the operation of the new government will be, that there will be a plurality of the former to combine against the interest of the latter, and that consequently it will be dangerous to put it in their power to do so. I would join with him in sentiments, if this were the case. Were this within the bounds of probability, I should be equally alarmed, but I think that those states, which are contradistinguished as carrying states, from the non-importing states, will be but few. I suppose the southern states will be considered by all, as under the latter description. Some other states have been mentioned by an honorable member on the same side, which are not considered as carrying states. New Jersey and Connecticut can by no means be enumerated among the carrying states. They receive their supplies through New York. Here then is a plurality of non-importing states. I could add another, if necessary. Delaware, though situated upon the water, is upon the list of non-carrying states. I might say that a great part of New Hampshire is so. I believe a majority of the people of that state receive their supplies from Massachusetts, Rhode Island, and Connecticut. Might I not add all those states which will be admitted hereafter into the union? These will be non-carrying

states, and will support Virginia in case the carrying states will attempt to combine against the rest. This objection must therefore fall to the ground. My honorable friend has made several other remarks, but I will defer saying any more till we come to those parts to which his objections refer.

JUNE 12—POWER TO LAY TAXES—JEFFERSON'S VIEWS—RELIGIOUS FREEDOM—TREATY-MAKING POWER.

Mr. MADISON.—Mr. Chairman, pardon me for making a few remarks on what fell from the honorable gentleman last up [Henry]. I am sorry to follow the example of gentlemen in deviating from the rule of the house.—But as they have taken the utmost latitude in their objections, it is necessary that those who favor the government should answer them. But I wish as soon as possible to take up the subject regularly. I will therefore take the liberty to answer some observations which have been irregularly made, though they might be more properly answered when we come to discuss those parts of the constitution to which they respectively refer. I will, however, postpone answering some others till then. If there be that terror in direct taxation, that the states would comply with requisitions to guard against the federal legislature; and if, as gentlemen say, this state will always have it in her power to make her collections speedily and fully, the people will be compelled to pay the same amount as quickly and punctually as if raised by the general government.

It has been amply proved, that the general government can lay taxes as conveniently to the people as the state governments, by imitating the state systems of taxation. If the general government have not the power of collecting its own revenues, in the first instance, it will be still dependent on the state governments in some measure: and the exercise of this power, after refusal, will be inevitably productive of injustice and confusion, if partial compliances be made before it is

driven to assume it. Thus, Sir, without relieving the people in the smallest degree, the alternative proposed will impair the efficacy of the government, and will perpetually endanger the tranquillity of the union.

The honorable member's objection with respect to requisitions of troops will be fully obviated at another time. Let it suffice now to say, that it is altogether unwarrantable, and founded upon a misconception of the paper before you. But the honorable member, in order to influence our decision, has mentioned the opinion of a citizen [Jefferson] who is an ornament to this state. When the name of this distinguished character was introduced, I was much surprised. Is it come to this, then, that we are not to follow our own reason? Is it proper to introduce the opinions of respectable men, not within these walls? If the opinion of an important character were to weigh on this occasion, could we not adduce a character equally great on our side? Are we, who (in the honorable gentleman's opinion) are not to be governed by an erring world, now to submit to the opinion of a citizen beyond the Atlantic? I believe, that were that gentleman now on this floor, he would be for the adoption of this constitution. I wish his name had never been mentioned. I wish every thing spoken here, relative to his opinion, may be suppressed if our debates should be published. I know that the delicacy of his feelings will be wounded, when he will see in print what has and may be said, concerning him on this occasion. I am, in some measure, acquainted with his sentiments on this subject. It is not right for me to unfold what he has informed me. But I will venture to assert, that the clause now discussed, is not objected to by Mr. Jefferson. He approves of it, because it enables the government to carry on its operations. —He admires several parts of it, which have been reprobated with vehemence in this house. He is captivated with the equality of suffrage in the senate, which the honorable gentleman [Mr. Henry] calls the rotten part of this constitution. But, whatever be the opinion of that illustrious citizen,

considerations of personal delicacy should dissuade us from introducing it here.

The honorable member has introduced the subject of religion. Religion is not guarded—there is no bill of rights declaring that religion should be secure. Is a bill of rights a security for religion? Would the bill of rights, in this state, exempt the people from paying for the support of one particular sect, if such sect were exclusively established by law? If there were a majority of one sect, a bill of rights would be a poor protection for liberty. Happily for the states, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. Fortunately for this commonwealth, a majority of the people are decidedly against any exclusive establishment —I believe it to be so in the other states. There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it, would be a most flagrant usurpation. I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom. It is better that this security should be depended upon from the general legislature, than from one particular state. A particular state might concur in one religious project. But the United States abound in such a variety of sects, that it is a strong security against religious persecution, and it is sufficient to authorise a conclusion, that no one sect will ever be able to outnumber or depress the rest.

I will not travel over that extensive tract, which the honorable member has traversed. I shall not now take notice of all his desultory objections. As occasions arise, I shall answer them.

It is worthy of observation, on this occasion, that the honorable gentleman himself, seldom fails to counteract the arguments of gentlemen on that side of the question. For

example, he strongly complains that the federal government, from the number of its members, will make an addition to the public expense, too formidable to be borne, and yet he and other gentlemen on the same side, object that the number of representatives is too small, though ten men are more than we are entitled to under the existing system! How can these contradictions be reconciled? If we are to adopt any efficient government at all, how can we discover or establish such a system, if it be thus attacked? Will it be possible to form a rational conclusion upon contradictory principles? If arguments of a contradictory nature were to be brought against the wisest and most admirable system to the formation of which human intelligence is competent it never could stand them.

He has acrimoniously inveighed against the government, because such transactions as congress think require secrecy, may be concealed; and particularly those which relate to treaties. He admits that when a treaty is forming, secrecy is proper; but urges that when actually made, the public ought to be made acquainted with every circumstance relative to it. The policy of not divulging the most important transactions, and negociations of nations, such as those which relate to war-like arrangements and treaties, is universally admitted. The congressional proceedings are to be occasionally published, including all receipts and expenditures of public money, of which no part can be used but in consequence of appropriations made by law. This is a security which we do not enjoy under the existing system. That part which authorises the government to withhold from the public knowledge what in their judgement may require secrecy, is imitated from the confederation; that very system which the gentleman advocates.

No treaty has been formed, and I will undertake to say, that none will be formed under the old system, which will secure to us the actual enjoyment of the navigation of the Mississippi. Our weakness precludes us from it. We are

entitled to it. But it is not under an inefficient government that we shall be able to avail ourselves fully of that right. I most conscientiously believe, that it will be far better secured under the new government, than the old, as we will be more able to enforce our right. The people of Kentucky will have an additional safeguard from the change of system. The strength and respectability of the union will secure them in the enjoyment of that right, till that country becomes sufficiently populous. When this happens, they will be able to retain it in spite of every opposition.

I can never admit that seven states are disposed to surrender that navigation. Indeed it never was the case. Some of their most distinguished characters are decidedly opposed to its relinquishment. When its cession was proposed by the southern states, the northern states opposed it. They still oppose it. New Jersey directed her delegates to oppose it, and is strenuously against it. The same sentiments pervade Pennsylvania: at least I am warranted to say so from the best information which I have. Those states, added to the southern states, would be a majority against it.

The honorable gentleman, to obviate the force of my observations with respect to concurrent collection of taxes under different authorities, said, that there was no interference between the concurrent collections of parochial, county, and state taxes, because they all irradiated from the same centre, but that this was not the case with the general government. To make use of the gentleman's own terms, the concurrent collections under the authorities of the general government and state governments, all irradiate from the people at large. The people is their common superior. The sense of the people at large, is to be the predominating spring of their actions. This is a sufficient security against interference.

Our attention was called to our commercial interest, and at the same time the landed interest was said to be in danger. If those ten men who were to be chosen, be elected by landed men, and have land themselves, can the electors have any

thing to apprehend? If the commercial interests be in danger, why are we alarmed about the carrying trade? Why is it said, that the carrying states will preponderate, if commerce be in danger? With respect to speculation, I will remark that stock-jobbing has prevailed, more or less, in all countries, and ever will, in some degree, notwithstanding any exertions to prevent it. If you judge from what has happened under the existing system, any change would render a melioration probable.

JUNE 13—MISSISSIPPI NEGOTIATIONS.[1]

Mr. MADISON.—Mr. Chariman, it is extremely disagreeable to me to enter into this discussion, as it is foreign to the

[1] TO GEORGE WASHINGTON.

RICHMOND, June 13th, 1788.

DEAR SIR,—Your favor of came to hand by the mail of Wednesday. I did not write by several late returns for two reasons: one the improbability of your having got back to Mount Vernon; the other a bilious indisposition which confined me for several days. I am again tolerably well recovered.

Appearances at present are less favorable than at the date of my last. Our progress is slow and every advantage is taken of the delay, to work on the local prejudices of particular sets of members. British debts, the Indiana claim, and the Missippi are the principal topics of private discussion & intrigue, as well as of public declamation. The members who have served in Congress have been dragged into communications on the first, which could not be justifiable on any other occasion if on the present. There is reason to believe that the event may depend on the Kentucky members; who seem to lean more agst than in favor of the Constitution. The business is in the most ticklish state that can be imagined. The majority will certainly be very small on whatever side it may finally lie; and I dare not encourage much expectation that it will be on the favorable side.

Oswald of Philad^{a}, has been here with letters for the anti federal leaders from N. York and probably Philad^{a}. He staid a very short time here during which he was occasionally closeted with H——y M–s–n &c. I learn from N. York that the elections have proved adverse to the Constitution.

Yours affect^{y}.—*Wash. MSS.*

object of our deliberations here, and may in the opinion of some, lead to sully the reputation of our public councils. As far as my memory will enable me, I will develope the subject. We will not differ with one another with respect to facts: perhaps we may differ with respect to principles. I will take the liberty to observe, that I was led before to make some observations, which had no relation to the subject under consideration, as relative to the western country, to obviate suggestions of gentlemen, which seemed to me to be groundless. I stated that there was a period when the southern states were advocates for the alienation or suspension of the right to the Mississippi (I will not say which), and the eastern states were against both. I mention this to shew, that there was no disposition in that part, to surrender that right or dispose of that country. I do suppose that the fishery had its influence on those states. No doubt it was the case.

For that, and other reasons, they still continue against the alienation. For it might lessen the security of retaining the fishery. From the best information, it never was the sense of the people at large, or the prevailing characters of the eastern states, to approve of the measure. If interest, Sir, should continue to operate on them, I humbly conceive, that they will derive more advantage from holding the Mississippi, than even the southern states. For if the carrying business be their natural province, how can it be so much extended and advanced, as by giving the encouragement to agriculture in the western country, and having the emolument of carrying their produce to market? The carrying trade must depend on agriculture for its support in a great measure. In what place is agriculture so capable of improvement and great extension, as in the western country? But whatever considerations may prevail in that quarter or any other, respecting their interest, I think we may fairly suppose that the consideration which the honorable member mentioned, and which has been repeated, I mean the emigrations which are going on to the

westward, must produce the same effect as to them which it may produce with respect to us. Emigrations are now going on from that quarter as well as from this state.

I readily confess that neither the old confederation, nor the new constitution, involves a right to give the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which will make it necessary to make a sacrifice. But there is a material difference between emergencies of safety in time of war, and those which may relate in mere commercial regulations. You might on solid grounds deny in peace, what you give up in war. I do not conceive, however, that there is that extreme aversion in the minds of the people of the eastern states, to emigrate to the westward, which was insinuated by my honorable friend. Particular citizens, it cannot be doubted, may be averse to it. But it is the sense of the people at large, which will direct the public measures. We find, from late arrangements made between Massachusetts and New York, that a very considerable country to the westward of New York, was disposed of to Massachusetts, and by Massachusetts, to some individuals, to conduct emigrants to that country.

There were seven states who thought it right to give up the navigation of the Mississippi for twenty-five years, for several reasons which have been mentioned. As far as I can recollect, it was nearly as my honorable friend said. But they had no idea of absolutely alienating it. I think one material consideration which governed them was, that there were grounds of serious negotiation between Great Britain and Spain, which might bring on a coalition between those nations, which might enable them to bind us on different sides, permanently withhold that navigation from us, and injure us in other respects materially. The temporary cession, it was supposed, would fix the permanent right in our favor, and prevent that dangerous coalition. It is but justice to myself to say, that however plausible the reasons urged for its temporary cession

may have been, they never convinced me of its utility. I have uniformly disapproved of it, and do now.

With respect to the secretary of foreign affairs [Jay], I am intimately connected with him. I shall say nothing of his abilities and attachment to his country. His character is established in both respects. He has given a train of reasoning which governed him in his project. If he was mistaken, his integrity and probity, more than compensate for the error. I am led to think there is no settled disposition in seven states to give up that object, because New Jersey, on a further consideration of the subject, actually gave instructions to her delegates to oppose it. And what was the ground of this? I do not know the extent and particular reasons of her instructions. But I recollect, that a material consideration was, that the cession of that river, would diminish the value of the western country, which was a common fund for the United States, and would consequently, tend to impoverish their public treasury. These, Sir, were rational grounds.

Give me leave, Sir, as I am upon this subject, and as the honorable gentleman has raised a question, whether it be not more secure under the old than the new constitution—to differ from him. I shall enter into the reasoning which, in my mind, renders it more secure under the new system. Two thirds of the senators present, (which) will be nine states, (if all attend to their duty) and the president must concur in every treaty which can be made. Here are two distinct and independent branches, which must agree to every treaty; under the existing system, two thirds of the states must concur to form a treaty. But it is but one body. Gentlemen may reason and conclude differently on this subject. I own that as far as I have any rights, which are but trivial, I would rather trust them to the new, than the old government. Besides, let me observe, that the house of representatives will have a material influence on the government, and will be additional security in this respect: but there is one thing which he mentioned, which merits attention. If commercial

policy be a source of great danger, it will have less influence in the new system, than in the old. For, in the house of representatives, it will have little or no influence. They are drawn from the landed interest; taken from the states at large, and many of them from the western country. Whereas the present members of congress have been taken from the Atlantic side of the continent. When we calculate the dangers that may arise in any case, we judge from the rules of proportion and chances of numbers. The people at large choose those who elect the president. The weight of population will be to the southward, if we include the western country. There will then be a majority of the people in favor of this right. As the president must be influenced by the sense and interest of his electors, as far as it depends on him (and his agency in making treaties is equal to that of the senate) he will oppose the cession of that navigation. As far as the influence of the representative goes, it will also operate in favor of this right.—The power of treaties is not lodged in the senators of particular states. Every state has an equal weight. If ten senators can make a treaty, ten senators can prevent one from being made. It is from a supposition, that all the southern delegates will be absent, that ten senators or two thirds of a majority, can give up this river. The possibility of absence operates equally as much against the northern states. If one fifth of the members present think the measure erroneous the votes of the states are to be taken upon it, and entered on the journals. Every gentlemen here ought to recollect, that this is some security, as the people will thereby know those who advocate iniquitous measures. If we consider the number of changes in the members of the government, we will find it another security. But after all, Sir, what will this policy signify, which tends to surrender the navigation of the Mississippi? Resolutions of congress to retain it, may be repeated, and re-echoed from every part of United States. It is not resolutions of this sort, which the people of this country wish for. They want an actual

possession of the right, and protection in its enjoyment. Similar resolutions have been taken under the existing system, on many occasions. But they have been, heretofore, and will be hereafter, in my opinion, nugatory and fruitless unless a change takes place, which will give energy to the acts of the government.

I will take the liberty to touch once more on the several considerations which produced the question, because perhaps the committee may not yet thoroughly comprehend it. In justice to those gentlemen who concluded in favor of the temporary cession, I mention their reasons, although I think the measure wrong. The reasons for so doing under the old system, will be done away by the new system. We could not, without national dishonor, assert our right to the Mississippi, and suffer any other nation to deprive us of it. This consideration, with others before mentioned, influenced them. I admit it was wrong. But it is sufficient to prove that they acted on principles of integrity. Will they not be bound by honor and conscience, when we are able to enjoy and retain our right, not to give it up, or suffer it to be interrupted? A weak system produced this project. A strong system will remove the inducement. For may we not suppose it will be reversed by a change of system? I was called up to say, what was its present situation. There are some circumstances within my knowledge, which I am not at liberty to communicate to this house. I will not go farther than to answer the objections of gentlemen. I wish to conceal no circumstance, which I can relate consistently with my duty. As to matters of fact, I have advanced nothing which I presume will be contradicted. On matters of opinion, we may differ. Were I at liberty, I could develope some circumstances, which would convince this house, that this project will never be revived in congress, and that therefore no danger is to be apprehended.

JUNE 14—ELECTION OF SENATORS AND REPRESENTATIVES.

Mr. MADISON.—Mr. Chairman, the reason of the exception was, that if congress could fix the place of choosing the senators, it might compel the state legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience, and was not necessary for the object of regulating the elections. But it was necessary to give the general government a control over the time and manner of choosing the senators, to prevent its own dissolution.

With respect to the other point, it was thought that the regulation of time, place, and manner, of electing the representatives, should be uniform throughout the continent. Some states might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some states, particularly South Carolina, with respect to Charleston, which is represented by thirty members. Should the people of any state, by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government. It was found impossible to fix the time, place, and manner, of the election of representatives in the constitution. It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution. And considering the state governments and general governments as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter. Were they exclusively under the control of the state governments, the general government might easily be dissolved. But if they be regulated properly by the state legislatures, the congressional control will very probably never be exercised. The power appears to

me satisfactory, and as unlikely to be abused as any part of the constitution.

[Mr. Monroe wished to hear an explanation of the clause which prohibits either house, during the session of congress, from adjourning for more than three days without the consent of the other.]

Mr. MADISON wondered that this clause should meet with a shadow of objection. It was possible, he observed, that the two branches might not agree concerning the time of adjournment, and that this possibility suggested the power given the president of adjourning both houses to such time as he should think proper, in case of their disagreement. That it would be very exceptionable to allow the senators, or even the representatives, to adjourn without the consent of the other house, at any season whatsoever, without any regard to the situation of public exigencies. That it was possible, in the nature of things, that some inconvenience might result from it; but that it was as well secured as possible.

JUNE 14—COMPENSATION OF CONGRESS.

Mr. MADISON.—Mr. Chairman, I most sincerely wish to give a proper explanation on this subject, in such a manner as may be to the satisfaction of every one. I shall suggest such considerations as led the convention to approve of this clause. With respect to the right of ascertaining their own pay, I will acknowledge, that their compensations, if practicable, should be fixed in the constitution itself, so as not to be dependent on congress itself, or on the state legislatures. The various vicissitudes, or rather the gradual diminution of the value of all coins and circulating medium, is one reason against ascertaining them immutably, as what may be now an adequate compensation, might by the progressive reduction of the value of our circulating medium, be extremely inadequate at a period not far distant.

It was thought improper to leave it to the state legislatures, because it is improper that one government should be dependent on another: and the great inconveniences experienced under the old confederation, show the states would be operated upon by local considerations, as contradistinguished from general and national interests.

Experience shows us that they have been governed by such heretofore, and reason instructs us that they would be influenced by them again. This theoretic inconvenience of leaving to Congress the fixing their compensations is more than counterbalanced by this in the Confederation—that the state legislatures had a right to determine the pay of the members of Congress, which enabled the states to destroy the general government. There is no instance where this power has been abused. In America, legislative bodies have reduced their own wages lower, rather than augmented them. This is a power which cannot be abused without rousing universal attention and indignation. What would be the consequence of the Virginia legislature raising their pay to four or five pounds each per day? The universal indignation of the people. Should the general Congress annex wages disproportionate to their services, or repugnant to the sense of the community, they would be universally execrated. The certainty of incurring the general detestation of the people will prevent abuse.

It was conceived that the great danger was in creating new offices, which would increase the burdens of the people; and not in a uniform admission of all meritorious characters to serve their country in the old offices. There is no instance of any state constitution which goes as far as this. It was thought to be a mean between two extremes. It guards against abuse by taking away the inducement to create new offices, or increase the emolument of old offices; and it gives them an opportunity of enjoying, in common with other citizens, any of the existing offices which they may be capable of executing; to have precluded them from this, would have

been to exclude them from a common privilege to which every citizen is entitled, and to prevent those who had served their country with the greatest fidelity and ability from being on a par with their fellow-citizens. I think it as well guarded as reason requires; more so than the constitution of any other nation.

JUNE 14—COMPENSATION OF CONGRESS.

Mr MADISON—Mr Chairman, let me ask those who oppose this part of the system, whether any alteration would not make it equally, or more liable to objections? Would it be better to fix their compensations? Would not this produce inconveniences? What authorises us to conclude, that the value of coins will continue always the same? Would it be prudent to make them dependent on the state governments for their salaries—on those who watch them with jealous eyes, and who consider them as encroaching, not on the people, but on themselves? But the worthy member supposes, that congress will fix their wages so low, that only the rich can fill the offices of senators and representatives. Who are to appoint them? The rich? No, sir, the people are to choose them. If the members of the general government were to reduce their compensations to a trifle, before the evil suggested could happen, the people could elect other members in their stead, who would alter that regulation. The people do not choose them for their wealth. If the state legislatures choose such men as senators, it does not influence the people at large in their election of representatives.—They can choose those who have the most merit and least wealth. If Congress reduce their wages to a trifle, what shall prevent the states from giving a man of merit, so much as will be an adequate compensation? I think the evil very remote, and if it were now to happen, the remedy is in our own hands, and may, by ourselves, be applied.

Another gentleman seems to apprehend infinite mischief

from a possibility that any member of congress may be appointed to an office, although he ceases to be a member the moment he accepts it. What will be the consequence of precluding them from being so appointed? If you have in your country, one man whom you could in time of danger trust above all others, with an office of high importance, he cannot undertake it till two years expire if he be a representative; or till the six years elapse, if a senator. Suppose America was engaged in war, and the man of the greatest military talents and approved fidelity, was a member of either house—would it be right that this man, who could lead us to conquer, and who could save his country from destruction, could not be made general till the term of his election expired? Before that time, we might be conquered by our enemies. This will apply to civil as well as military officers. It is impolitic to exclude from the service of his country, in any office, the man who may be most capable of discharging its duties, when they are most wanting.

The honorable gentleman said, that those who go to Congress, will look forward to offices as a compensation for their services, rather than salaries. Does he recollect that they shall not fill offices created by themselves? When they go to congress, the old offices will be filled.—They cannot make any probable calculation that the men in office will die, or forfeit their offices As they cannot get any new offices, one of those contingencies must happen, before they can get any office at all. The chance of getting an office is, therefore, so remote, and so very distant, that it cannot be considered as a sufficient reason to operate on their minds, to deviate from their duty.

Let any man calculate in his own mind, the improbability of a member of the general government getting into an office, when he cannot fill any office newly created, and when he finds all the old offices filled at the time he enters into congress. Let him view the danger and impolicy of precluding a member of congress from holding existing offices, and the danger of

making one government dependent on another, and he will find that both clauses deserve applause.

The observations made by several honorable members, illustrate my opinion, that it is impossible to devise any system agreeable to all.—When objections so contradictory are brought against it, how shall we decide? Some gentlemen object to it, because they may make their wages too high—others object to it, because they may make them too low. If it is to be perpetually attacked by principles so repugnant, we may cease to discuss. For what is the object of our discussion? Truth, sir. To draw a true and just conclusion. Can this be done without rational premises, and syllogistic reasoning?

As to the British parliament, it is nearly as he says. But how does it apply to this case? Suppose their compensations had been appointed by the state governments, or fixed in the constitution—would it be a safe government for the union, if its members depended on receiving their salaries from other political bodies at a distance, and fully competent to withhold them? Its existence would, at best, be but precarious. If they were fixed in the constitution, they might become extremely inadequate, and produce the very evil which gentlemen seem to fear.—For then a man of the highest merit could not act unless he were wealthy. This is the most delicate part in the organization of a republican government. It is the most difficult to establish on unexceptionable grounds. It appears to me most eligible as it is. The constitution has taken a medium between the two extremes, and perhaps with more wisdom than either the British or the state governments, with respect to their eligibility to offices. They can fill no new offices created by themselves, nor old ones of which they increased the salaries. If they were excluded altogether, it is possible that other disadvantages might accrue from it, besides the impolicy and injustice of depriving them of a common privilege. They will not relinquish their legislative, in order to accept other offices. They will more probably confer

them on their friends and connections. If this be an inconvenience, it is incident to all governments. After having heard a variety of principles developed, I thought that on which it is established the least exceptionable, and it appears to me sufficiently well guarded.

JUNE 14—ORIGINATING OF MONEY BILLS.

Mr. MADISON. Mr. Chairman, the criticism made by the honorable member, is, that there is an ambiguity in the words, and that it is not clearly ascertained where the origination of money bills may take place. I suppose the first part of the clause is sufficiently expressed to exclude all doubts. The gentlemen who composed the convention divided in opinion, concerning the utility of confining this to any particular branch. Whatever it be in Great Britain, there is a sufficient difference between us and them to render it inapplicable to this country. It has always appeared to me, to be a matter of no great consequence, whether the senate had a right of originating, or proposing amendments to money bills or not. To withhold it from them would create disagreeable disputes. Some American constitutions make no difference. Virginia and South Carolina, are, I think, the only states, where this power is restrained. In Massachusetts, and other states, the power of proposing amendments is vested, unquestionably, in their senates. No inconvenience has resulted from it. On the contrary, with respect to South Carolina, this clause is continually a source of disputes. When a bill comes from the other house, the senate entirely rejects it, and this causes contentions. When you send a bill to the senate, without the power of making any alteration, you force them to reject the bill altogether, when it would be necessary and advantageous that it should pass.

The power of proposing alterations, removes this inconvenience, and does not appear to me at all objectionable. I

should have no objection to their having a right of originating such bills. People would see what was done, and it would add the intelligence of one house to that of the other. It would be still in the power of the other house to obstruct any injudicious measure proposed by them. There is no land mark or constitutional provision in Great Britain, which prohibits the house of lords from intermeddling with money bills; but the house of commons have established this rule. Yet the lords insist on their having a right to originate them, as they possess great property, as well as the commons, and are taxed like them. The house of commons object to their claim, lest they should too lavishly make grants to the crown, and increase the taxes. The honorable member says, that there is no difference between the right of originating bills, and proposing amendments. There is some difference, though not considerable. If any grievances should happen in consequence of unwise regulations in revenue matters, the odium would be divided, which will now be thrown on the house of representatives. But you may safely lodge this power of amending with the senate. When a bill is sent with proposed amendments to the house of representatives, if they find the alterations defective, they are not conclusive. The house of representatives are the judges of their propriety, and the recommendation of the senate is nothing. The experience of this state justifies this clause. The house of delegates has employed weeks in forming a money bill; and because the senate had no power of proposing amendments, the bill was lost altogether; and a new bill obliged to be again introduced, when the insertion of one line by the senate would have done. Those gentlemen who oppose this clause will not object to it, when they recollect that the senators are appointed by the states, as the present members of congress are appointed. For, as they will guard the political interests of the states in other respects, they will attend to them very probably in their amendments to money bills. I think this power, for these considerations, is useful and necessary.

JUNE 14—POWER OVER THE MILITIA.

Mr MADISON.—Mr Chairman, I most cordially agree with the honorable member last up [Mason], that a standing army is one of the greatest mischiefs that can possibly happen. It is a great recommendation for this system, that it provides against this evil more than any other system known to us, and particularly more than the old system of confederation. The most effectual way to guard against a standing army, is to render it unnecessary. The most effectual way to render it unnecessary, is to give the general government full power to call forth the militia, and exert the whole natural strength of the union when necessary. Thus you will furnish the people with sure and certain protection, without recurring to this evil; and the certainty of this protection from the whole, will be a strong inducement to individual exertion. Does the organization of the government warrant a belief, that this power will be abused? Can we believe that a government of a federal nature, consisting of many coequal sovereignties, and particularly having one branch chosen from the people, would drag the militia unnecessarily to an immense distance? This, Sir, would be unworthy the most arbitrary despot. They have no temptation whatever to abuse this power; such abuse could only answer the purpose of exciting the universal indignation of the people, and drawing on themselves the general hatred and detestation of their country.

I cannot help thinking that the honorable gentleman has not considered in all its consequences, the amendment he has proposed. Would this be an equal protection, Sir? Or would it not be a most partial provision? Some states have three or four states in contact. Were this state invaded, as it is bounded by several states, the militia of three or four states would, by this proposition, be obliged to come to our aid; and those from some of the states would come a far greater distance than those of others. There are other states, which if invaded, could be assisted by the militia of one state only, there being several states which border but on one state.

Georgia and New-Hampshire would be infinitely less safe than those of the other states. Were we to adopt this amendment, we should set up those states as butts for invasions, invite foreign enemies to attack them, and expose them to peculiar hardships and dangers. Were the militia confined to any limited distance from their respective places of abode, it would produce equal, nay, more, inconveniences. The principles of equality, and reciprocal aid, would be destroyed in either case.

I cannot conceive that this constitution, by giving the general government the power of arming the militia, takes it away from the state governments. The power is concurrent, and not exclusive. Have we not found from experience, that while the power of arming and governing of the militia has been solely vested in the state legislatures, they were neglected and rendered unfit for immediate service? Every state neglected too much this most essential object. But the general government can do it more effectually. Have we not also found, that the militia of one state were almost always insufficient to succour its harrassed neighbor? Did all the states furnish their quotas of militia with sufficient promptitude? The assistance of one state will be of little avail to repel invasion. But the general head of the whole union can do it with effect, if it be vested with power to use the aggregate strength of the union. If the regulation of the militia were to be committed to the executive authority alone, there might be reason for providing restrictions. But, Sir, it is the legislative authority that has this power. They must make a law for the purpose.

The honorable member is under another mistake. He wishes martial law to be exercised only in time of war, under an idea that congress can establish it in time of peace. The states are to have the authority of training the militia according to the congressional discipline; and of governing them at all times, when not in the service of the union.—Congress is to govern such part of them as may be employed in the actual

service of the United States; and such part only can be subject to martial law. The gentlemen in opposition have drawn a most tremendous picture of the constitution in this respect. Without considering that the power was absolutely indispensible, they have alarmed us with the possible abuse of it, but have shewn no inducement or motive to tempt them to such abuse. Would the legislature of the state drag the militia of the eastern shore to the western frontiers, or those of the western frontiers to the eastern shore, if the local militia were sufficient to effect the intended purpose? There is something so preposterous, and so full of mischief in the idea of dragging the militia unnecessarily from one end of the continent to the other, that I think there can be no ground of apprehension. If you limit their power over the militia you give them a pretext for substituting a standing army. If you put it in the power of the state governments to refuse the militia, by requiring their consent, you destroy the general government, and sacrifice particular states. The same principles and motives which produce disobedience to requisitions, will produce refusal in this case.

The restrictions which the honorable gentleman mentioned to be in the British constitution, are all provisions against the power of the executive magistrate. But the house of commons may, if they be so disposed, sacrifice the interest of their constituents in all those cases. They may prolong the duration of mutiny bills, and grant supplies to the king to carry on an impolitic war. But they have no motives to do so. For they have strong motives to do their duty. We have more ample security than the people of Great Britain. The powers of the government are more limited and guarded, and our representatives are more responsible than the members of the British house of commons.

JUNE 14—POWER OVER PURSE AND SWORD.

Mr MADISON—Mr Chairman, the honorable gentleman has laid much stress on the maxim, that the purse and sword

ought not to be put in the same hands, with a view of pointing out the impropriety of vesting this power in the general government. But it is totally inapplicable to this question. What is the meaning of this maxim? Does it mean that the sword and purse ought not to be trusted in the hands of the same government? This cannot be the meaning. For there never was, and I can say there never will be an efficient government, in which both are not vested. The only rational meaning, is, that the sword and purse are not to be given to the same member. Apply it to the British government, which has been mentioned. The sword is in the hands of the British king. The purse in the hands of the parliament. It is so in America, as far as any analogy can exist. Would the honorable member say, that the sword ought to be put in the hands of the representatives of the people, or in other hands independent of the government altogether? If he says so, it will violate the meaning of that maxim. This would be a novelty hitherto unprecedented. The purse is in the hands of the representatives of the people. They have the appropriation of all monies. They have the direction and regulation of land and naval forces. They are to provide for calling forth the militia—and the president is to have the command; and, in conjunction with the senate, to appoint the officers. The means ought to be commensurate to the end. The end is general protection. This cannot be effected without a general power to use the strength of the union.

We are told that both sides are distinguished by these great traits, confidence and distrust. Perhaps there may be a less or greater tincture of suspicion on one side, than the other. But give me leave to say, that where power can be safely lodged, if it be necessary, reason commands its cession. In such case it is imprudent and unsafe to withhold it. It is universally admitted that it must be lodged in some hands or other. The question then is, in what part of the government it ought to be placed; and not whether any other political body independent of the government should have it or not.

I profess myself to have had an uniform zeal for a republican government. If the honorable member, or any other person, conceives that my attachment to this system arises from a different source, he is greatly mistaken. From the first moment that my mind was capable of contemplating political subjects, I never, till this moment, ceased wishing success to a well regulated republican government. The establishment of such in America was my most ardent desire. I have considered attentively (and my consideration has been aided by experience) the tendency of a relaxation of laws, and a licentiousness of manners.

If we review the history of all republics, we are justified by the supposition, that if the bands of the government be relaxed, confusion will ensue. Anarchy ever has, and I fear ever will, produce despotism. What was the state of things that preceded the wars and revolutions in Germany? Faction and confusion. What produced the disorders and commotions of Holland? The like causes. In this commonwealth, and every state in the union, the relaxed operation of the government has been sufficient to alarm the friends of their country. The rapid increase of population in every state is an additional reason to check dissipation and licentiousness. Does it not strongly call for the friends of republican government to endeavor to establish a republican organization? A change is absolutely necessary. I can see no danger in submitting to practice an experiment which seems to be founded on the best theoretic principles.

But the honorable member tells us, there is not an equal responsibility delineated on that paper, to that which is in the English government. Calculations have been made here, that when you strike off those entirely elected by the influence of the crown, the other part does not bear a greater proportion to the number of their people, than the number fixed in that paper, bears to the number of inhabitants in the United States. If it were otherwise, there is still more responsibility in this government. Our representatives are chosen for two

years. In Great Britain they are chosen for seven years. Any citizen may be elected here. In Great Britain no one can be elected to represent a county, without having an estate of the value of £600, sterling a year, nor to represent a corporation without an annual estate of £300. Yet we are told, there is no sympathy or fellow-feeling between the people here, and their representatives; but that in England they have both:—A just comparison will show, that if confidence be due to the government there, it is due ten fold here.

(Mr Madison made many other observations, but spoke so very low that he could not be distinctly heard.)

JUNE 14—POWER OVER ELECTIONS.

Mr MADISON.—Mr Chairman, I cannot think that the explanation of the gentleman last up, is founded in reason. It does not say that the militia shall be called out in all cases, but in certain cases. There are cases in which the execution of the laws may require the operation of militia, which cannot be said to be an invasion or insurrection. There may be a resistance to the laws which cannot be termed an insurrection.

My honorable friend over the way has opened a new source of argument. He has introduced the assertions of gentlemen out of doors. If we thus depart from regularity, we will never be able to come to a decision.

If there be any gentleman who is a friend to the government, and says, that the elections may, or ought to be held in one place, he is an enemy to it on that ground. With respect to the time, place, and manner of elections, I cannot think, notwithstanding the apprehensions of the honorable gentleman, that there is any danger, or if abuse should take place, that there is not sufficient security. If all the people, of the United States should be directed to go to elect in one place, the members of the government would be execrated for the infamous regulation. Many would go to trample them under foot for their conduct—and they would be succeeded by men

who would remove it. They would not dare to meet the universal hatred and detestation of the people, and run the risk of the certain dreadful consequences. We must keep within the compass of human probability. If a possibility be the cause of objection, we must object to every government in America. But the honorable gentleman may say, that better guards may be provided. Let us consider the objection. The power of regulating the time, place, and manner of elections, must be vested some where. It could not be fixed in the constitution without involving great inconveniences. They could then have no authority to adjust the regulation to the changes of circumstances. The question then is, whether it ought to be fixed unalterably in the state governments, or subject to the control of the general government. Is it not obvious, that the general government would be destroyed without this control? It has already been demonstrated that it will produce many conveniences. Have we not sufficient security against abuse? Consider fully the principles of the government. The sum of the powers given up by the people of Virginia is divided into two classes: One to the federal and the other to the state government. Each is subdivided into three branches. These may be kept independent of each other in the one as well as the other. In this system they are as distinct as is consistent with good policy. This, in my opinion, instead of diminishing, increases the security of liberty more than any government that ever was. For the powers of government which in every other country are given to one body, are here given to two; and are favorable to public liberty. With respect to secrecy, if every thing in which it is necessary, could be enumerated, I would have no objection to mention them. All the state legislatures can keep secret what they think ought to be concealed. The British house of commons can do it. They are in this respect under much less restraint than congress. There never was any legislative assembly without a discretionary power of concealing important transactions, the publication of which might be

detrimental to the community. There can be no real danger as long as the government is constructed on such principles.

He objects also to the clause respecting adjournment that neither house shall, without the consent of the other, adjourn for more than three days. It was before remarked, that if a difference should take place between the houses about the time of adjournment, the president could still determine it: from which no danger could arise, as he is chosen in a secondary degree by the people, and would consequently fix no time which would be repugnant to the sense of the representatives of the people. Another, and more satisfactory answer is this: suppose the senate wished to chain down the house of representatives, what is to hinder them from going home? How bring them back again? It would be contrary to the spirit of the constitution to impede the operations of the government, perhaps at a critical period. I cannot conceive that such difference will often happen. Were the senate to attempt to prevent an adjournment, it would but serve to irritate the representatives, without having the intended effect, as the president could adjourn them. There will not be occasion for the continual residence of the senators at the seat of government. What business have they more than the house of representatives? The appointment of officers and treaties. With respect to the appointment of officers, a law may be made to grant it to the President alone. It must be supposed there will be but few and subordinate officers to be appointed, as the principal offices will be filled. It is observed that the President, when vacancies happen during the recess of the senate, may fill them till it meets. With respect to treaties, the occasions of forming them will not be many, and will mean but a small proportion of the time of session.

JUNE 16—POWER OVER THE MILITIA.

Mr MADISON—Mr Chairman, I will endeavor to follow the rule of the house; but must pay due attention to the observa-

tions which fell from the gentleman. I should conclude, from abstracted reasoning, that they were ill founded. I should think, that if there were any object, which the general government ought to command, it would be the direction of the national forces. And as the force which lies in militia is most safe, the direction of that part ought to be submitted to, in order to render another force unnecessary. The power objected to is necessary, because it is to be employed for national purposes. It is necessary to be given to every government. This is not opinion, but fact. The highest authority may be given that the want of such authority in the government, protracted the late war, and prolonged its calamities.

He says, that one ground of complaint at the beginning of the revolution, was, that a standing army was quartered upon us. This was not the whole complaint. We complained because it was done without the local authority of this country —without the consent of the people of America. As to the exclusion of standing armies in the bill of rights of the states, we shall find that though in one or two of them, there is something like a prohibition, yet in most of them it is only provided, that no armies shall be kept without the legislative authority; that is, without the consent of the community itself. Where is the impropriety of saying that we shall have an army, if necessary? Does not the notoriety of this constitute security? If inimical nations were to fall upon us when defenceless, what would be the consequence? Would it be wise to say, that we should have no defence? Give me leave to say that the only possible way to provide for standing armies, is to make them unnecessary.

The way to do this, is to organize and discipline our militia, so as to render them capable of defending the country against external invasions, and internal insurrections. But it is urged that abuses may happen. How is it possible to answer objections against possibility of abuses? It must strike every logical reasoner, that these cannot be entirely provided

against. I really thought that the objection in the militia was at an end. Was there ever a constitution, in which, if authority was vested, it must not have been executed by force, if resisted? Was it not in the contemplation of this state, when contemptuous proceedings were expected, to recur to something of this kind? How is it possible to have a more proper resource than this? That the laws of every country ought to be executed, cannot be denied. That force must be used if necessary, cannot be denied. Can any government be establish d, that will answer any purpose whatever, unless force be provided for executing its laws? The constitution does not say that a standing army shall be called out to execute the laws. Is not this a more proper way? The militia ought to be called forth to suppress smugglers. Will this be denied? The case actually happened at Alexandria. There were a number of smugglers, who were too formidable for the civil power to overcome. The military quelled the sailors, who, otherwise would have perpetrated their intentions. Should a number of smugglers have a number of ships, the militia ought to be called forth to quell them. We do not know but what there may be combinations of smugglers in Virginia hereafter. We all know the use made of the Isle of Man. It was a general depository of contraband goods. The parliament found the evil so great, as to render it necessary to wrest it out of the hands of its possessor.

The honorable gentleman says that it is a government of force. If he means military force, the clause under consideration proves the contrary. There never was a government without force. What is the meaning of government? An institution to make people do their duty. A government leaving it to a man to do his duty, or not as he pleases, would be a new species of government, or rather no government at all. The ingenuity of the gentleman is remarkable, in introducing the riot act of Great Britain. That act has no connection, or analogy, to any regulation of the militia; nor is there any thing in the constitution to warrant the general

government to make such an act. It never was a complaint in Great Britain, that the militia could be called forth. If riots should happen, the militia are proper to quell it, to prevent a resort to another mode. As to the infliction of ignominious punishments, we have no ground of alarm, if we consider the circumstances of the people at large. There will be no punishments so ignominious as have been inflicted already. The militia law of every state to the north of Maryland, is less rigorous than the particular law of this state. If a change be necessary to be made by the general government, it will be in our favor. I think that the people of those states would not agree to be subjected to a more harsh punishment than their own militia laws inflict. An observation fell from a gentleman on the same side with myself, which deserves to be attended to. If we be dissatisfied with the national government, if we should choose to renounce it, this is an additional safeguard to our defence. I conceive that we are peculiarly interested in giving the general government as extensive means as possible to protect us. If there be a particular discrimination between places in America, the southern states are, from their situation and circumstances, most interested in giving the national government the power of protecting its members.

(Here Mr Madison made some other observations; but spoke so very low, that his meaning could not be comprehended.)

An act passed a few years ago in this state, to enable the government to call forth the militia to enforce the laws when a powerful combination should take place to oppose them. This is the same power which the constitution is to have. There is a great deal of difference between calling forth the militia, when a combination is formed to prevent the execution of the laws, and the sheriff or constable carrying with him a body of militia to execute them in the first instance; which is a construction not warranted by the clause. There is an act also in this state, empowering the officers of the customs to summon any persons to assist them when they meet with

obstruction in executing their duty. This shews the necessity of giving the government power to call forth the militia when the laws are resisted. It is a power vested in every legislature in the union, and which is necessary to every government. He then moved, that the clerk should read those acts—which were accordingly read.

JUNE 16—POWER OVER THE MILITIA.

Mr MADISON.—Mr Chairman, let me ask this committee, and the honorable member last up [Henry], what we are to understand from this reasoning? The power must be vested in congress, or in the state governments. Or there must be a division or concurrence. He is against division—It is a political monster. He will not give it to congress, for fear of oppression. Is it to be vested in the state governments? If so, where is the provision for general defence? If ever America should be attacked, the states would fall successively. It will prevent them from giving aid to their sister states. For as each state will expect to be attacked, and wish to guard against it, each will retain its own militia for its own defence. Where is this power to be deposited then, unless in the general government, if it be dangerous to the public safety to give it exclusively to the states. If it must be divided, let him shew a better manner of doing it than that which is in the constitution. I cannot agree with the other honorable gentleman, that there is no check. There is a powerful check in that paper. The state governments are to govern the militia, when not called forth for general national purposes; and congress is to govern such part only as may be in the actual service of the union. Nothing can be more certain and positive than this. It expressly empowers congress to govern them when in the service of the United States. It is then clear, that the states govern them when they are not. With respect to suppressing insurrections, I say that those clauses which were mentioned by the honorable gentleman, are com-

patible with a concurrence of the power. By the first, congress is to call them forth to suppress insurrections and repel invasions of foreign powers. A concurrence in the former case, is necessary, because a whole state may be in insurrection against the union. What has passed, may perhaps justify this apprehension. The safety of the union and particular states, requires that the general government should have power to repel foreign invasions. The fourth section of the fourth article, is perfectly consistent with the exercise of the power by the states. The words are, "The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence." The word invasion here, after power had been given in the former clause to repel invasions may be thought tautologous, but it has a different meaning from the other. This clause speaks of a particular state. It means that it shall be protected from invasion by other states. A republican government is to be guaranteed to each state, and they are to be protected from invasion from other states, as well as from foreign powers: And on application by the legislature or executive as the case may be, the militia of the other states are to be called to suppress domestic insurrections. Does this bar the states from calling forth their own militia? No; but it gives them a supplementary security to suppress insurrection and domestic violence.

The other clause runs in these words, "No state shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." They are restrained from making war, unless invaded, *or in imminent danger*. When in such danger, they are not restrained. I can perceive no competition in these clauses. They cannot be

said to be repugnant to a concurrence of the power. If we object to the constitution in this manner, and consume our time in verbal criticism, we shall never put an end to the business.

JUNE 16—POWER OVER SEAT OF GOVERNMENT.

Mr MADISON.—Mr Chairman, I did conceive, sir, that the clause under consideration, was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask, whether there would not be much larger scope for those dangers? I cannot comprehend that the power of legislating over a small district, which cannot exceed ten miles square, and may not be more than one mile, will involve the dangers which he apprehends. If there be any knowledge in my mind, of the nature of man, I should think it would be the last thing that would enter into the mind of any man, to grant exclusive advantages in a very circumscribed district to the prejudice of the community at large. We make suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But after all, bring home this question to ourselves. Is it probable that the members from Georgia, New Hampshire, &c., will concur to sacrifice the privileges of their friends? I believe, that whatever state may become the seat of the general government, it will become the object of jealousy, and of the envy of the other states. Let me remark, if not already remarked, that there must be a cession by particular states, of the district to congress, and that the states may settle the terms of the cession. The states may make what stipulation they please in it, and if they apprehend any danger, they may refuse it altogether. How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power? If it were at the pleasure of a particular state to control the cession and deliberations of congress, would they be secure from

insults, or the influence of such state? If this commonwealth depended for the freedom of deliberation, or the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to congress? With respect to the government of Holland, I believe the states general have no jurisdiction over the Hague. But I have heard that mentioned as a circumstance which gave undue influence to Holland over the rest. We must limit our apprehensions to certain degrees of probability. The evils which they urge must result from this clause, are extremely improbable: nay, almost impossible.

JUNE 16—POWER OVER SEAT OF GOVERNMENT.

Mr. MADISON—Mr Chairman, I am astonished that the honorable member should launch out into such strong descriptions without any occasion. Was there ever a legislature in existence that held their sessions at a place where they had not jurisdiction? I do not mean such a legislature as they have in Holland; for it deserves not the name.—Their powers are such as congress have now; which we find not reducible to practice. If you be satisfied with the shadow and form instead of the substance, you will render them dependent on the local authority. Suppose the legislature of this country should sit in Richmond, while the exclusive jurisdiction of the place was in some particular country, would this country think it safe that the general good should be subject to the paramount authority of a part of the community?

The honorable member asks, why ask for this power, and if the subsequent clause be not fully competent for the same purpose? If so what new terrors can arise from this particular clause? It is only a superfluity. If that latitude of construction which he contends for, were to take place with respect to the sweeping clause, there would be room for those horrors. But it gives no supplementary power: It only

enables them to execute the delegated powers. If the delegation of their powers be safe, no possible inconvenience can arise from this clause. It is at most but explanatory. For when any power is given, its delegation necessarily involves authority to make laws to execute it. Were it possible to delineate on paper, all those particular cases and circumstances in which legislation by the general legislature would be necessary and leave to the states all the other powers, I imagine no gentleman would object to it. But this is not within the limits of human capacity. The particular powers which are found necessary to be given, are therefore delegated generally, and particular and minute specification is left to the legislature.

(Here Mr Madison spoke of the distinction between regulation of police and legislation; but so low he could not be heard.)

When the honorable member objects to giving the general government jurisdiction over the place of their session, does he mean that it should be under the control of any particular state, that might at a critical moment seize it? I should have thought that this clause would have met with the most cordial approbation. As the consent of the state in which it may be, must be obtained, and as it may stipulate the terms of the grant, should they violate the particular stipulations, it would be an usurpation: So that if the members of congress were to be guided by the laws of their country, none of those dangers could arise.

(Mr Madison made several other remarks, which could not be heard.)

JUNE 17—IMPORTATION OF SLAVES.

Mr MADISON—Mr Chairman, I should conceive this clause [permitting importation of slaves] to be impolitic, if it were one of those things which could be excluded without encountering greater evils. The southern states would not have entered into the union of America, without the temporary permission of that trade. And if they were excluded from

the union, the consequences might be dreadful to them and to us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The union in general is not in a worse situation. Under the articles of confederation, it might be continued forever: but by this clause an end may be put to it after twenty years. There is, therefore, an amelioration of our circumstances. A tax may be laid in the meantime, but it is limited, otherwise congress might lay such a tax as would amount to a prohibition. From the mode of representation and taxation, congress cannot lay such a tax on slaves as will amount to manumission. Another clause secures us that property which we now possess. At present, if any slave elopes to any of those states where slaves are free, he becomes emancipated by their laws. For the laws of the states are uncharitable to one another in this respect. But in this constitution, "no person held to service, or labor, in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due." This clause was expressly inserted to enable owners of slaves to reclaim them.

This is a better security than any that now exists. No power is given to the general government to interpose with respect to the property in slaves now held by the states. The taxation of this state being equal only to its representation, such a tax cannot be laid as he supposes. They cannot prevent the importation of slaves for twenty years; but after that period they can. The gentlemen from South Carolina and Georgia argued in this manner: "We have now liberty to import this species of property, and much of the property now possessed, had been purchased, or otherwise acquired, in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us from it? The slaves of Virginia would rise in value, and we would be

obliged to go to your markets. I need not expatiate on this subject. Great as the evil is, a dismemberment of the union, would be worse. If those states should disunite from the other states, for not indulging them in the temporary continuance of this traffic, they might solicit and obtain aid from foreign powers.

JUNE 17—IMPORTATION OF SLAVES.

Mr. MADISON replied, that even the southern states, who were most affected, were perfectly satisfied with this provision, and dreaded no danger to the property they now hold. It appeared to him, that the general government would not intermeddle with that property for twenty years, but to lay a tax on every slave imported, not exceeding ten dollars; and that after the expiration of that period, they might prohibit the traffic altogether. The census in the constitution was intended to introduce equality in the burdens to be laid on the community. No gentleman objected to laying duties, imposts, and excises, uniformly. But uniformity of taxes would be subversive to the principles of equality: for that it was not possible to select any article which would be easy for one state, but what would be heavy for another. That the proportion of each state being ascertained, it would be raised by the general government in the most convenient manner for the people, and not by the selection of any one particular object. That there must be some degree of confidence put in agents, or else we must reject a state of civil society altogether. Another great security to this property, which he mentioned, was, that five states were greatly interested in that species of property; and there were other states which had some slaves, and had made no attempt, or taken any step to take them from the people. There were a few slaves in New York, New Jersey, and Connecticut: these states would, probably, oppose any attempts to annihilate this species of property. He concluded, by observing, that he would be glad to leave the decision of this to the committee.

JUNE 17—THE VICE PRESIDENCY.

Mr MADISON.—Mr Chairman, I think there are some peculiar advantages incident to this office [the Vice Presidency], which recommend it to us. There is in the first place a great probability this officer will be taken from one of the largest states, and if so, the circumstance of his having an eventual vote will be so far favorable. The consideration which recommends it to me, is, that he will be the choice of the people at large.—There are to be ninety-one electors, each of whom has two votes: if he have one fourth of the whole number of votes, he is elected vice-president. There is much more propriety in giving this office to a person chosen by the people at large, than to one of the senate who is only the choice of the legislature of one state.—His eventual vote is an advantage too obvious to comment upon. I differ from the honorable member in the case which enables congress to make a temporary appointment. When the president and vice-president die, the election of another president will immediately take place, and suppose it would not, all that congress could do, would be to make an appointment, between the expiration of the four years and the last election, and to continue only to such expiration. This can rarely happen. This power continues the government in motion, and is well guarded.

JUNE 18—ELECTION OF PRESIDENT.[1]

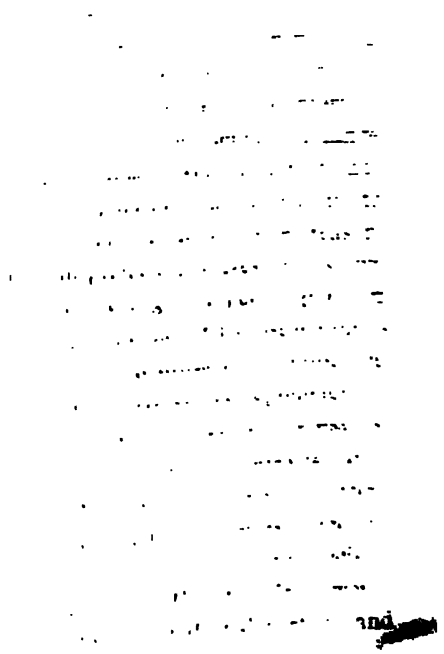
Mr MADISON—Mr Chairman, I will take the liberty of making a few observations, which may place this in such a light as

[1] TO GEORGE WASHINGTON.

RICHMOND, June 18, 1788.

DEAR SIR,—

No question direct or indirect has yet been taken by which the state of parties could be determined, of course each is left to enjoy the hopes resulting from its own partial calculations. It is probable the majority on either side will not exceed 3, 4, 5, or 6. I indulge a belief that at this time the friends of the Constitution have the advantage



may not be so inconsiderable as he supposes. With respect to the possibility, that a small number of votes may decide his election, I do not know how, nor do I think that a bare calculation of possibility ought to govern us.—One honorable gentleman has said, that the eastern states may, in the eventual election, choose him. But in the extravagant calculation he has made, he has been obliged to associate North Carolina and Georgia, with the five smallest northern States. There can be no union of interest or sentiments between states so differently situated.

The honorable member last up has committed a mistake in saying there must be a majority of the whole number of electors appointed. A majority of votes, equal to a majority of the electors appointed, will be sufficient. Forty-six is a majority of ninety one, and will suffice to elect the president.

JUNE 18—TREATY-MAKING POWER.

Mr. MADISON.—Mr. Chairman, I am persuaded that when this power comes to be thoroughly and candidly viewed, it will be found right and proper. As to its extent, perhaps it will be satisfactory to the committee, that the power is precisely in the new constitution, as it is in the confederation. In the existing confederacy, congress are authorized indefinitely to make treaties. Many of the states have recognised the treaties of congress to be the supreme law of the land. Acts have passed within a year, declaring this to be the case. I have seen many of them. Does it follow, because this power is given to congress, that it is absolute and unlimited? I do not conceive that power is given to the president and senate to dismember the empire, or to alienate any great essential right. I do not think the whole legislative authority have this power. The exercise of the power must be consistent with the object of the delegation.

One objection against the amendment proposed, is this:

that by implication, it would give power to the legislative authority to dismember the empire—a power that ought not to be given, but by the necessity that would force assent from every man. I think it rests on the safest foundation as it is. The object of treaties is the regulation of intercourse with foreign nations, and is external. I do not think it possible to enumerate all the cases in which such external regulations would be necessary. Would it be right to define all the cases in which congress could exercise this authority? The definition might, and probably would be defective. They might be restrained by such a definition, from exercising the authority where it would be essential to the interest and safety of the community. It is most safe, therefore, to leave it to be exercised as contingencies may arise.

It is to be presumed, that in transactions with foreign countries, those who regulate them, will feel the whole force of national attachment to their country. The contrast being between their own nation and a foreign nation, is it not presumable they will, as far as possible, advance the interest of their own country? Would it not be considered as a dangerous principle in the British government, were the king to have the same power in internal regulations, as he has in the external business of treaties? Yet, as among other reasons, it is natural to suppose he will prefer the interest of his own, to that of another country, it is thought proper to give him this external power of making treaties. This distinction is well worthy the consideration of gentlemen. I think the argument of the gentleman who restrained the supremacy of these to the laws of particular states, and not to congress, is rational. Here the supremacy of a treaty is contrasted with the supremacy of the laws of the states. It cannot be otherwise supreme. If it does not supersede their existing laws, as far as they contravene its operation, it cannot be of any effect. To counteract it by the supremacy of the state laws would bring on the union the just charge of national perfidy, and involve us in war.

Suppose the king of Great Britain should make a treaty with France, where he had a constitutional right; if the treaty should require an internal regulation, and the parliament should make a law to that effect, that law would be binding on the one, though not on the other nation. Suppose there should be a violation of right by the exercise of this power by the president and senate; if there was apparent merit in it, it would be binding on the people: for where there is a power for any particular purpose, it must supersede what may oppose it, or else it can be no power. For instance, where there is a power of declaring war, that power as to declaring war supersedes every thing. This would be an unfortunate case, should it happen; but should it happen, there is a remedy; and there being a remedy, they will be restrained against abuses.

But let us compare the responsibility in this government to that of the British government. If there be an abuse of this royal prerogative, the minister who advises him, is liable to impeachment. This is the only restraint on the sovereign. Now, Sir, is not the minister of the United States under restraint? Who is the minister?—The president himself, who is liable to impeachment. He is responsible in person. But for the abuse of the power of the king, the responsibility is in his advisers. Suppose the constitution had said, that this minister alone could make treaties, and when he violated the interest of the nation, he would be impeached by the senate; then the comparison would hold good between the two governments. But is there not an additional security by adding to him the representatives and guardians of the political interest of the states? If he should seduce a part of the senate to a participation in his crimes, those who were not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterwards, when other members come in the senate, one-third being excluded every second year. So that there is a two-fold security. The security of impeachment and conviction by

those senators that they may be innocent, should no more than one-third be engaged with the president in the plot; and should there be more of them engaged in it, he may be tried and convicted by the succeeding senators, and the upright senators who were in the senate before.

As to the case of the Russian ambassador, I shall say nothing. It is as inapplicable as many other quotations made by the gentleman. I conceive that as far as the bills of rights in the states, do not express any thing foreign to the nature of such things, and express fundamental principles essential to liberty, and those privileges which are declared necessary to all free people, these rights are not encroached on by this government.

(Mr. Madison added other remarks which could not be heard.)

JUNE 20—POWER OF JUDICIARY.[1]

Mr MADISON—Mr Chairman, permit me to make a few observations which may place this part in a more favorable light than the gentleman placed it in yesterday. It may be proper to remark, that the organization of the general government

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[1] TO JAMES MADISON.

RICHMD June 20, 1788.

HONR SIR,—

No question has yet been taken by which the strength of parties can be determined. The calculations on different sides do not accord; each making them under the bias of their particular wishes. I think however the friends of the Constitution are most confident of superiority, and am inclined myself to think they have at this time the advantage of 3 or 4 or possibly more in point of number. The final question will probably decide the contest in a few days more. We are now on the Judiciary Department, against which the last efforts of the adversaries seem to be made. How far they will be able to make an impression, I cannot say. It is not probable that many proselytes will be made on either side. As this will be handed to you at Court you can make its contents known to Majr Moore and other friends to whom I have not time separately to write. With my regards to my mother & the family I remain yr affec. Son.—*Mad. MSS.*

for the United States was in all its parts, very difficult. There was a peculiar difficulty in that of *the Executive*. Every thing incident to it must have participated of that difficulty. That mode which was judged most expedient was adopted, till experience should point out one more eligible. This part was also attended with difficulties. It claims the indulgence of a fair and liberal interpretation. I will not deny that according to my view of the subject, a more accurate attention might place it in terms which would exclude some of the objections now made to it. But if we take liberal construction, I think we shall find nothing dangerous or inadmissible in it. In compositions of this kind, it is difficult to avoid technical terms which have the same meaning. An intention to this may satisfy gentlemen, that precision was not so easily obtained as may be imagined. I will illustrate this by one thing in the constitution. There is a general power to provide courts to try felonies and piracies committed on the high seas. Piracy is a word which may be considered as a term of the law of nations. Felony is a word unknown to the law of nations, and is to be found in the British laws, and from thence adopted in the law of these states. It was thought dishonorable to have recourse to that standard. A technical term of the law of nations is therefore used that we should find ourselves authorised to introduce it into the laws of the United States. The first question which I shall consider, is whether the subjects of its cognizance be proper subjects of a federal jurisdiction. The second will be, whether the provisions respecting it be consistent with safety and impropriety, will answer the purposes intended, and suit local circumstances.

The first class of cases to which its jurisdiction extends, are those which may arise under the constitution; and this is to extend to equity as well as law. It may be a misfortune, that in organizing any government, the explication of its authority should be left to any of its co-ordinate branches. There is no example in any country where it is otherwise. There is a

new policy in submitting it to the judiciary of the United States. That causes of a federal nature will arise, will be obvious to every gentleman, who will recollect that the states are laid under restrictions; and that the rights of the union are secured by these restrictions. They may involve equitable as well as legal controversies. With respect to the laws of the union, it is so necessary and expedient that the judicial power should correspond with the legislative, that it has not been objected to. With respect to treaties, there is a peculiar propriety in the judiciary expounding them.

These may involve us in controversies with foreign nations. It is necessary therefore, that they should be determined in the courts of the general government. There are strong reasons why there should be a supreme court to decide such disputes. If in any case uniformity be necessary, it must be in the exposition of treaties. The establishment of one revisionary superintending power, can alone secure such uniformity. The same principles hold with respect to cases affecting ambassadors, and foreign ministers. To the same principles may also be referred their cognizance in admiralty and maritime cases. As our intercourse with foreign nations will be affected by decisions of this kind, they ought to be uniform. This can only be done by giving the federal judiciary exclusive jurisdiction. Controversies affecting the interest of the United States ought to be determined by their own judiciary, and not be left to partial local tribunals.

The next case, where two or more states are the parties, is not objected to. Provision is made for this by the existing articles of confederation, and there can be no impropriety in referring such disputes to this tribunal.

Its jurisdiction in controversies between a state and citizens of another state, is much objected to, and perhaps without reason. It is not in the power of individuals to call any state into court. The only operation it can have, is that if a state should wish to bring suit against a citizen, it must be brought before the federal court. This will give satisfaction to indi-

viduals, as it will prevent citizens on whom a state may have a claim, being dissatisfied with the state courts. It is a case which cannot often happen, and if it should be found improper, it will be altered. But it may be attended with good effects. This may be illustrated by other cases. It is provided, that cases of citizens of different states may be carried to the federal courts.

But this will not go beyond the cases where they may be parties. A *femme covert* may be a citizen of another state, but cannot be a party in this court. A subject of a foreign power having a dispute with a citizen of this state, may carry it to the federal court; but an alien enemy cannot bring suit at all. It appears to me, that this can have no operation but this—to give a citizen a right to be heard in the federal courts; and if a state should condescend to be a party, this court may take cognizance of it.

As to its cognizance of disputes between citizens of different states, I will not say it is a matter of such importance. Perhaps it might be left to the state courts. But I sincerely believe this provision will be rather salutary, than otherwise. It may happen that a strong prejudice may arise in some states, against the citizens of others, who may have claims against them. We know what tardy, and even defective administration of justice, has happened in some states. A citizen of another state might not chance to get justice in a state court, and at all events he might think himself injured.

To the next clause there is no objection.

The next case provides for disputes between a foreign state, and one of our states, should such a case ever arise; and between a citizen and a foreign citizen or subject. I do not conceive that any controversy can ever be decided in these courts, between an American state and a foreign state, without the consent of the parties. If they consent, provision is here made. The disputes ought to be tried by the national tribunal. This is consonant to the law of nations. Could there be a more favorable or eligible provision to avoid controversies

with foreign powers? Ought it to be put in the power of a member of the union to drag the whole community into war? As the national tribunal is to decide, justice will be done. It appears to me from this review, that, though on some of the subjects of this jurisdiction, it may seldom or never operate, and though others be of inferior consideration, yet they are mostly of great importance, and indispensably necessary.

The second question which I proposed to consider, was, whether such organization be made as would be safe and convenient for the states and the people at large. Let us suppose that the subjects of its jurisdiction had only been enumerated, and power given to the general legislature to establish such courts as might be judged necessary and expedient, do not think that in that case any rational objection could be made to it, any more than would be made to a general power of legislation in certain enumerated cases. If that would be safe, this appears to me better and more restrictive, so far as it may be abused by extension of power. The most material part is the discrimination of superior and inferior jurisdiction, and the arrangement of its powers; as, where it shall have original, and where appellate cognizance. Where it speaks of appellate jurisdiction, it expressly provides, that such regulations will be made as will accommodate every citizen; so far as practicable in any government. The principal criticism which has been made, was against the appellate cognizance, as well of fact as law. I am happy that the honorable member who presides, and who is familiarly acquainted with the subject, does not think it involves any thing unnecessarily dangerous. I think that the distinction of fact as well as law, may be satisfied by the discrimination of the civil and common law. But if gentlemen should contend, that appeals, as to fact, can be extended to jury cases, I contend, that by the word regulations, it is in the power of congress to prevent it, or prescribe such a mode as will secure the privilege of jury trial. They may make a regula-

tion to prevent such appeals entirely: or they may remand the fact, or send it to an inferior contiguous court, to be tried; or otherwise preserve that ancient and important trial.

Let me observe, that so far as the judicial power may extend to controversies between citizens of different states, and so far as it gives them power to correct by another trial, a verdict obtained by local prejudices, it is favorable to those states who carry on commerce. There are a number of commercial states, who carry on trade, for other states.—Should the states in debt to them make unjust regulations, the justice that would be obtained by the creditors, might be merely imaginary and nominal. It might be either entirely denied, or partially granted. This is no imaginary evil. Before the war, New York was to a great amount a creditor of Connecticut: while it depended on the laws and regulations of Connecticut, she might withhold payment. If I be not misinformed, there were reasons to complain. These illiberal regulations and causes of complaint, obstruct commerce. So far as this power may be exercised, Virginia will be benefitted by it. It appears to me from the most correct view, that by the word regulations, authority is given them to provide against the inconveniences, and so far as it is exceptionable, they can remedy it. This they will do if they be worthy of the trust we put in them. I think them worthy of that confidence which that paper puts in them. Were I to select a power which might be given with confidence, it would be judicial power. This power cannot be abused, without raising the indignation of all the people of the states. I cannot conceive that they would encounter this odium. Leaving behind them their character and friends, and carrying with them local prejudices, I cannot think they would run such a risk. That men should be brought from all parts of the union to the seat of government, on trivial occasions, cannot reasonably be supposed. It is a species of possibility; but there is every degree of probability against it. I would as soon believe, that by virtue of the power of collecting taxes or customs, they would

compel every man to go and pay the money for his taxes with his own hands to the federal treasurer, as I would believe this. If they would not do the one, they would not the other.

I am of opinion, and my reasoning and conclusions are drawn from facts, that as far as the power of congress can extend, the judicial power will be accommodated to every part of America. Under this conviction, I conclude, that the legislation, instead of making the supreme federal court absolutely stationary, will fix it in different parts of the continent, to render it more convenient. I think this idea perfectly warrantable. There is an example, within our knowledge which illustrates it. By the confederation, congress have an exclusive right of establishing rules for deciding in all cases, what captures should be legal, and establishing courts for determining such cases finally. A court was established for that purpose, which was at first stationary.—Experience, and the desire of accommodating the decision of this court to the convenience of the citizens of the different parts of America, had this effect—it soon became a regulation, that this court should be held in different parts of America, and was held accordingly. If such a regulation was made, when only the interest of the small number of people who are concerned with captures was affected, will not the public convenience be consulted, when that of a very considerable proportion of the people of America will be concerned? It will be also in the power of congress to vest this power in the state courts, both inferior and superior. This they will do, when they find the tribunals of the states established on a good footing.

Another example will illustrate this subject further. By the confederation, congress are authorized to establish courts for trying piracies and felonies committed on the high seas. Did they multiply courts unnecessarily in this case? No, sir, they invested the admiralty courts of each state with this jurisdiction. Now, sir, if there will be as much sympathy between congress and the people, as now, we may fairly conclude, that the federal cognizance will be vested in the local tribunals.

I have observed, that gentlemen suppose, that the general legislature will do every mischief they possibly can, and that they will omit to do every thing good which they are authorized to do. If this were a reasonable supposition, their objections would be good. I consider it reasonable to conclude, that they will as readily do their duty, as deviate from it: nor do I go on the grounds mentioned by gentlemen on the other side—that we are to place unlimited confidence in them, and expect nothing but the most exalted integrity and sublime virtue. But I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks —no form of government can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men. So that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.

Having taken this general view on the subject, I will now advert to what has fallen from the honorable gentleman who presides. His criticism is, that the judiciary has not been guarded from an increase of the salary of the judges. I wished myself, to insert a restraint on the augmentation, as well as diminution, of their compensation: and supported it in the convention. But I was overruled. I must state the reasons which were urged. They had great weight. The business must increase. If there was no power to increase their pay, according to the increase of business, during the life of the judges, it might happen that there would be such an accumulation of business as would reduce the pay to a most trivial consideration. This reason does not hold as to the president, for in the short period which he presides, this cannot happen. His salary ought not, therefore, to be increased. It was objected yesterday, that there was no provision for a jury

from the vicinage. If it could have been done with safety, it would not have been opposed. It might so happen, that a trial would be impracticable in the country. Suppose a rebellion in a whole district, would it not be impossible to get a jury? The *trial by jury* is held as sacred in England as in America.—There are deviations of it in England; yet greater deviations have happened here since we established our independence, than have taken place there for a long time, though it be left to the legislative discretion. It is a misfortune in any case that this trial should be departed from, yet in some cases it is necessary. It must be, therefore, left to the discretion of the legislature to modify it according to circumstances. This is a complete and satisfactory answer.

It was objected, that this jurisdiction would extend to all cases, and annihilate the state courts. At this moment of time it might happen, that there are many disputes between citizens of different states. But in the ordinary state of things, I believe that any gentlemen will think that the far greater number of causes—ninety-nine out of an hundred, will remain with the state judiciaries. All controversies directly between citizen and citizen, will still remain with the local courts. The number of cases within the jurisdiction of these courts are very small when compared to those in which the local tribunals will have cognizance. No accurate calculation can be made but I think that any gentleman who will contemplate the subject at all, must be struck with this truth. [Here Mr Madison spoke too low to be understood.)

As to vexatious appeals, they can be remedied by congress. It would seldom happen that mere wantonness would produce such an appeal, or induce a man to sue unjustly. If the courts were on a good footing in the states, what can induce them to take so much trouble? I have frequently, in the discussion of this subject, been struck with one remark. It has been urged, that this would be oppressive to those who by imprudence, or otherwise are under the denomination of debtors. I know not how this can be conceived. I will

venture one observation. If this system should have the effect of establishing universal justice, and accelerating it throughout America, it will be one of the most fortunate circumstances that could happen for those men. With respect to that class of citizens, compassion is their due. To those, however, who are involved in such incumbrances, relief cannot be granted. Industry and economy are the only resources.—It is vain to wait for money, or temporise. The great desiderata are public and private confidence. No country in the world can do without them. Let the influx of money be ever so great, if there be no confidence, property will sink in value, and there will be no inducements or emulation to industry. The circulation of confidence is better than the circulation of money. Compare the situations of nations in Europe, where the justice is administered with celerity, to that of those where it is refused, or administered tardily. Confidence produces the best effects in the former. The establishment of confidence will raise the value of property, and relieve those who are so unhappy as to be involved in debts. If this be maturely considered, I think it will be found that as far as it will establish uniformity of justice, it will be of real advantage to such persons. I will not enter into those considerations which the honorable gentleman added. I hope some other gentleman will undertake to answer.

JUNE 24—NECESSITY FOR RATIFICATION.[1]

Mr MADISON.—Mr Chairman, nothing has excited more admiration in the world, than the manner in which free governments have been established in America. For it was the

[1] TO GEORGE WASHINGTON.

RICHMOND, Tuesday, June 25 [23]

DEAR SIR,—

We got through the Constitution by paragraphs today. Tomorrow some proposition for closing the business will be made. On our side a ratification involving a few declaratory truths not affecting its validity

[illegible]

[illegible]

How have the confederacies of ancient and modern times been formed? As far as ancient history describes the former to us, they were brought about by the wisdom of some eminent sage. How was the imperfect union of the Swiss Cantons formed? By danger. How was the confederacy of the United Netherlands formed? By the same. They are surrounded by dangers. By these and one influential character, they were stimulated to unite. How was the Germanic system formed? By danger in some degree, but principally by the overruling influence of individuals.

When we consider this government, we ought to make great allowances. We must calculate the impossibility that every state should be gratified in its wishes, and much less that every individual should receive this gratification. It has

in a form not affecting the validity and plenitude of the ratification, will be proposed. The final question is likely to be decided by a small majority. I do not know that either party despairs absolutely. The friends of the Convention seem to be in the best spirits; and I hope have the best reason to be so. At the same time it is not impossible they may miscalculate their number, and that accidents may reduce it below the requisite amount, two members on that side, who went away with a purpose of returning are still absent, it is said; and a third is so ill as to render his vote somewhat precarious. It may be questioned whether on any estimate this loss if it sh^d^ continue may not endanger the results.

Yours aff^y^

—*N. Y. Pub. Lib. MSS.*

TO GEORGE WASHINGTON.

RICHMOND, June, 25 1788.

DEAR SIR,—

On the question to-day for *previous* amendments, the votes stood 80 ays—88 noes. On the final question the ratification passed 89 ayes—79 noes. Subsequent amendments will attend the act; but are yet to be settled. The temper of the minority will be better known to-morrow. The proceedings have been without flaw or pretext of it; and there is no doubt that acquiescence if not cordiality will be manifested by the unsuccessful party. *Two* of the leaders however betray the effect of the disappointment, so far as it is marked in their countenances.

In haste, Yrs.

—*Mad. MSS.*

never been denied by the friends of the paper on the table, that it has effects. But they do not think that it contains any real danger. They conceive that they will in all probability be removed, when experience will shew it to be necessary. I beg that gentlemen in deliberating on this subject, would consider the alternative. Either nine states shall have ratified it or they will not. If nine states will adopt it, can it be reasonably presumed or required, that nine states having freely and fully considered the subject, and come to an affirmative decision, will, upon the demand of a single state, agree that they acted wrong, and could not see its defect—tread back the steps which they have taken and come forward and reduce it to uncertainty, whether a general system shall be adopted or not? Virginia has always heretofore spoken the language of respect to the other states, and she has always been attended to. Will it be that language, to call on a great majority of the states to acknowledge that they have done wrong? Is it the language of confidence to say, that we do not believe that amendments for the preservation of the common liberty and general interests of the state, will be consented to by them? This is neither the language of confidence nor respect. Virginia when she speaks respectfully, will be as much attended to, as she has hitherto been when speaking this language.

It is a most awful thing that depends on our decision—no less than whether the thirteen states shall unite freely, peaceably, and unanimously, for security of their common happiness and liberty, or whether every thing is to be put in confusion and disorder. Are we to embark in this dangerous enterprise, uniting various opinions to contrary interests, with the vain hope of coming to an amicable concurrence?

It is worthy of our consideration, that those who prepared the paper on the table, found difficulties not to be described, in its formation—mutual deference and concession were absolutely necessary. Had they been inflexibly tenacious of their individual opinions they would never have concurred.

Under what circumstances was it formed? When no party was formed, or particular proposition made, and men's minds were calm and dispassionate. Yet under these circumstances, it was difficult, extremely difficult, to agree to any general system.

Suppose eight states only should ratify, and Virginia should propose certain alterations, as the previous condition of her accession. If they should be disposed to accede to her proposition, which is the most favorable conclusion, the difficulty attending it will be immense. Every state, which has decided it, must take up the subject again. They must not only have the mortification of acknowledging that they had done wrong, but the difficulty of having a reconsideration of it among the people, and appointing new conventions to deliberate upon it. They must attend to *all* the amendments, which may be dictated by as great a diversity of political opinions, as there are local attachments. When brought together in one assembly, they must go through, and accede to every one of the amendments. The gentlemen who, within this house, have thought proper to propose previous amendments, have brought no less than forty amendments—a bill of rights which contains twenty amendments, and twenty other alterations, some of which are improper and inadmissible. Will not every state think herself equally entitled to propose as many amendments? And suppose them to be contradictory, I leave it to this convention, whether it be probable that they can agree, or agree to any thing, but the plan on the table; or whether greater difficulties will not be encountered, than were experienced in the progress of the formation of the constitution.

I have said that there was a great contrariety of opinions among the gentlemen in the opposition. It has been heard in every stage of their opposition. I can see from their amendments, that very great sacrifices have been made by some of them. Some gentlemen think that it contains too much state influence: others, that it is a complete consolida-

tion, and a variety of other things. Some of them think that the equality in the senate, is not a defect; others, that it is the bane of all good governments. I might, if there were time, show a variety of other cases, where their opinions are contradictory. If there be this contrariety of opinions in this house, what contrariety may not be expected, when we take into view, thirteen conventions equally or more numerous? Besides, it is notorious from the debates which have been published, that there is no sort of uniformity in the grounds of the opposition.

The state of New York has been adduced. Many in that state are opposed to it from local views. The two who opposed it in the general convention from that state, are in the state convention. Every step of this system was opposed by those two gentlemen. They were unwilling to part with the old confederation. Can it be presumed then, sir, that gentlemen in this state, who admit the necessity of changing, should ever be able to unite in sentiments with those who are totally averse to any change.

I have revolved this question in my mind, with as much serious attention, and called to my aid as much information as I could, yet I can see no reason for the apprehensions of gentlemen, but I think that if Virginia will agree to ratify this system, I shall look upon it as one of the most fortunate events that ever happened for human nature. I cannot, therefore, without the most excruciating apprehensions, see a possibility of losing its blessings. It gives me infinite pain to reflect, that all the earnest endeavors of the warmest friends of their country, to introduce a system promotive of our happiness, may be blasted by a rejection, for which I think with my honorable friend, that previous amendments are but another name. The gentlemen in opposition seem to insist on those amendments, as if they were all necessary for the liberty and happiness of the people. Were I to hazard an opinion on the subject, I would declare it infinitely more safe in its present form, than it would be after intro-

ducing into it that long train of alterations, which they call amendments.

With respect to the proposition of the honorable gentleman to my left [Mr Wythe] gentlemen apprehend, that by enumerating three rights, it implied there were no more. The observations made by a gentleman lately up, on that subject, correspond precisely with my opinion. That resolution declares, that the powers granted by the proposed constitution, are the gift of the people, and may be resumed by them when perverted to their oppression, and every power not granted thereby, remains with the people, and at their will. It adds likewise, that no right of any denomination, can be cancelled, abridged, restrained or modified, by the general government, or any of its officers, except in those instances in which power is given by the constitution for these purposes. There cannot be a more positive and unequivocal declaration of the principles of the adoption, that every thing not granted, is reserved. This is obviously and self-evidently the case, without the declaration.—Can the general government exercise any power not delegated? If an enumeration be made of our rights, will it not be implied, that every thing omitted, is given to the general government? Has not the honorable gentleman himself, admitted, that an imperfect enumeration is dangerous? Does the constitution say that they shall not alter the law of descents, or do those things which would subvert the whole system of the state laws? If he did, what was not excepted, would be granted. Does it follow from the omission of such restrictions, that they can exercise powers not delegated? The reverse of the proposition holds. The delegation alone warrants the exercise of any power.

With respect to *the amendments*, proposed by the honorable gentleman, it ought to be considered how far they are good. As far as they are palpably and insuperably objectionable, they ought to be opposed. One amendment he proposes is, that any army which shall be necessary, shall be raised by the consent of two-thirds of the states. I most devoutly wish,

that there may never be an occasion for having a single regiment. There can be no harm in declaring, that standing armies in time of peace, are dangerous to liberty, and ought to be avoided, as far as it may be consistent with the protection, of the community. But when we come to say, that the national security shall depend not on a majority of the people of America, but that it may be frustrated by less than one-third of the people of America, I ask if this be a safe or proper mode? What part of the United States are most likely to stand in need of this protection? The weak parts, which are the southern states. Will it be safe to leave the United States at the mercy of one-third of the states, a number, which may comprise a very small proportion of the American people? They may all be in that part of America which is least exposed to danger. As far as a remote situation from danger, would render exertions for public defence less active, so far the southern states would be endangered.

The regulation of *commerce*, he further proposed, should depend on two-thirds of both houses. I wish I could recollect the history of this matter; but I cannot call it to mind with sufficient exactness. But I recollect the reasoning of some gentlemen on that subject. It was said, and I believe with truth, that every part of America, does not stand in equal need of security. It was observed, that the northern states were most competent to their own safety. Was it reasonable, asked they, that they should bind themselves to the defence of the southern states, and still be left at the mercy of the minority for commercial advantages? Should it be in the power of the minority to deprive them of this and other advantages, when they were bound to defend the whole union, it might be a disadvantage for them to confederate.

These were his arguments. This policy of guarding against political inconveniences, by enabling a small part of the community to oppose the government, and subjecting the majority to a small minority is fallacious. In some cases it may be good; in others it may be fatal. In all cases it puts

it in the power of the minority to decide a question which concerns the majority.

I was struck with surprise when I head him express himself alarmed with respect to the emancipation of slaves. Let me ask, if they should even attempt it, if it will not be an usurpation of power? There is no power to warrant it, in that paper. If there be, I know it not. But why should it be done? Says the honorable gentleman, for the general welfare —it will infuse strength into our system. Can any member of this committee suppose, that it will increase our strength? Can any one believe, that the American councils will come into a measure which will strip them of their property, discourage, and alienate the affections of five-thirteenths of the union. Why was nothing of this sort aimed at before? I believe such an idea never entered into any American breast, nor do I believe it ever will enter into the heads of those gentlemen who substitute unsupported suspicions for reasons.

I am persuaded that the gentlemen who contend for previous amendments are not aware of the dangers which must result. Virginia, after having made opposition, will be obliged to recede from it. Might not the nine states say with a great deal of propriety—"It is not proper, decent, or right in you, to demand that we should reverse what we have done. Do as we have done—place confidence in us, as we have done in one another—and then we shall freely, fairly and dispassionately consider and investigate your propositions, and endeavour to gratify your wishes; but if you do not do this, it is more reasonable that you should yield to us, than we to you. You cannot exist without us—you must be a member of the union."

The case of Maryland, instanced by the gentleman, does not hold. She would not agree to confederate, because the other states would not assent to her claims of the western lands. Was she gratified? No—she put herself like the rest. Nor has she since been gratified. The lands are in the common stock of the union.

As far as his amendments are not objectionable, or unsafe, so far they may be subsequently recommended. Not because they are necessary, but because they can produce no possible danger, and may gratify some gentlemen's wishes. But I never can consent to his previous amendments, because they are pregnant with dreadful dangers.

TO GEORGE WASHINGTON. WASH. MSS.

RICHM^D^, June 27, 1788.

DEAR SIR,

The Convention came to a final adjournment today. The inclosed is a copy of their Act of ratification with the yeas & nays. A variety of amendments have been since recommended; several of them highly objectionable, but which could not be parried. The Minority are to sign an address this evening which is announced to be of a peace-making complexion. Having not seen it I can give no opinion of my own. I wish it may not have a further object. Mr. H——y declared previous to the final question that altho' he should submit as a quiet citizen, he should seize the first moment that offered for shaking off the yoke in a *Constitutional way*. I suspect the plan will be to engage ⅔ of the Legislatures in the task of undoing the work; or to get a Congress appointed in the first instance that will commit suicide on their own Authority.

Yrs, most affect^y^ & respectf^y^.

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

N. York July 2d, 1788.

My dear friend

Some of the letters herewith enclosed have been here for some time without my knowing it. The others came to hand yesterday. I have also in hand for you the Marquis Condorcet's essai on the probability of decisions resulting from plurality of voices,[1] which I understand from Mazzei is a gift from the author. I shall forward it by the first conveyance.

There are public letters just arrived from Jefferson. The contents are not yet known. His private letters to me & others refer to his public political views. I find that he is becoming more and more a friend to the new Constitution, his objections being gradually dispelled by his own further reflections on the subject. He particularly renounces his opinion concerning the expediency of a ratification by 9 & a refusal by 4 States, considering the mode pursued by Mass^ts as the only rational one, but disapproving some of the alterations recommended by that State. He will see still more room for disapprobation in the reconsideration of other States. The defects of the Constitution which he continues to criticize are the omission of a bill of right, and of the principle of rotation at least in the Ex. Departm^t.

Congress have been some days on the question where the first meeting of the new Cong^s shall be

[1] Condorcet's work on the application of the mathematical theory of probabilities to judicial decisions first appeared in 1785.

placed. Philad[a] failed by a single voice from Delaware which ultimately aimed at that place, but wished to bring Wilmington into view. In that vote N. Hampshire & Connecticut both concurred. N. York is now in nomination and if those States accede which I think probable, and Rhode Island which has as yet refused to sit in the Question can be prevailed on to vote which I also think probable, the point will be carried. In this event a great handle I fear will be given to those who have opposed the new Gov[t] on account of the Eastern preponderancy in the federal system.

Y[rs] affe[ly]

I enclose a copy of the ratification as proposed of N. York. What think you of some of the expository articles?

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

NEW YORK, July 16, 1788.

DEAR SIR,

The enclosed papers will give you the latest intelligence from Poughkeepsie. It seems by no means certain what the result there will be. Some of the most sanguine calculate on a ratification. The best informed apprehend some clog that will amount to a condition. The question is made peculiarly interesting in this place, by its connexion with the question relative to the place to be recommended for the meeting of the first Congress under the new Government.

Thirteen States are at present represented. A plan for setting this new machine in motion has been reported some days, but will not be hurried to a conclusion. Having been but a little time here, I am not yet fully in the politics of Congress.

I had on the road several returns of a bilious lax which made my journey more tedious and less agreeable than it would otherwise have been—at present I am pretty well again. Hoping this will find you and yours more completely so,

I remain &c.

TO GEORGE WASHINGTON. WASH. MSS.

N. YORK, July 21, 1788.

DEAR SIR,

I have deferred writing since my arrival here in the hourly hope of being enabled to communicate the final news from Poughkepsie. By a letter from Hamilton dated the day before yesterday I find that it is equally uncertain when the business will be closed, and what will be its definitive form.[1] The inclosed gazette states the form which the depending proposition bears. It is not a little strange that the antifederal party should be reduced to such an expedient, and yet be able to keep their numbers together in the opposition. Nor is it less strange that the other party, as appears to be the case,

[1] Hamilton wrote that he thought New York would be willing to ratify the constitution and come into the Union with the reservation of a right to recede in case the amendments she proposed were not adopted within a given period.—*Works of Alexander Hamilton* (Lodge), viii, 191.

should hesitate in deciding that the expedient as effectually keeps the State for ye present, out of the New Union as the most unqualified rejection could do. The intelligent citizens see clearly that this would be its operation and are agitated by the double motives of federalism and a zeal to give this City a fair chance for the first meeting of the new Government.

Congress have deliberated in part on the arrangements for putting the new Machine into operation, but have concluded on nothing but the times for choosing electors &c. Those who wish to make N. York the place of meeting studiously promote delay, others who are not swayed by this consideration do not urge dispatch. They think it would be well to let as many States as possible have an opportunity of deciding on the Constitution; and what is of more consequence, they wish to give opportunities where they can take place for as many elections of State Legislatures as can precede a reasonable time for making the appointments and arrangements referred to them. If there be too great an interval between the acts of Congress on this Subject and the next election or next meeting of a State Legislature, it may afford a pretext for an intermediate summoning of the existing members, who are every where less federal than their successors hereafter to be elected will probably be. This is particularly the case in Maryland, where the antifederal temper of the Executive would render an intermediate and extraordinary meeting of the Assembly of that State the

more likely to be called. On my way thro' Maryland I found such an event to be much feared by the friends and wished by the adversaries of the Constitution. We have no late news from Europe, nor anything from N. Carolina.

With every sentiment of esteem & attachment,

I remain Dr Sir, Your obed^t^ & affect. Servt

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

NEW YORK, July 22, 1788.

DEAR SIR,

The enclosed papers will give you a view of the business in the Convention at Poughkeepsie. It is not as yet certain that the ratification will take any final shape that can make New York *immediately* a member of the new Union. The opponents cannot come to that point without yielding a complete victory to the Federalists, which must be a severe sacrifice of their pride. It is supposed too, that *some* of them would not be displeased at seeing a bar to the pretensions of this city to the first meeting of the new Government. On the other side, the zeal for an unconditional ratification is not a little increased by contrary wishes.

There have been no late arrivals from Europe nor any news from any Quarter. Don't omit sending me the papers containing the series of articles announced in a late one.

TO THOMAS JEFFERSON. MAD. MSS.

NEW YORK, 24 July, 1788.

DEAR SIR,

Your two last unacknowledged favors were of Decr 20 and Feby 6. They were received in Virginia, and no opportunity till the present precarious one by the way of Holland, has enabled me to thank you for them.

I returned here about ten days ago from Richmond which I left a day or two after the dissolution of the Convention. The final question on the new Government was put on the 25th of June. It was twofold 1. whether previous amendments should be made a condition of ratification. 2. directly on the Constitution in the form it bore. On the first the decision was in the negative, 88 being no, 80 only ay. On the second & definitive question, the ratification was affirmed by 89 ays ag^st 79 noes. A number of alterations were then recommended to be considered in the mode pointed out in the Constitution itself. The meeting was remarkably full; Two members only being absent and those known to be on the opposite sides of the question. The debates also were conducted on the whole with a very laudable moderation and decorum, and continued untill both sides declared themselves ready for the question. And it may be safely concluded that no irregular opposition to the System will follow in that State, at least with the countenance of the leaders on that side. What local eruptions may be occasioned by ill-timed or rigorous executions of the Treaty of

peace against British debtors, I will not pretend to say. But altho. the leaders, particularly H——y & M—s—n, will give no countenance to popular violences it is not to be inferred that they are reconciled to the event, or will give it a positive support. On the contrary both of them declared they could not go that length, and an attempt was made under their auspices to induce the minority to sign an address to the people which, if it had not been defeated by the general moderation of the party would probably have done mischief.

Among a variety of expedients employed by the opponents to gain proselytes, Mr.[1] *Henry first, and after him Col^o Mason, introduced* the *opinions expressed in a letter from a correspondent* (*Master Donald or Skipwith, I believe*) and endeavored to turn the influence of *your name even against parts of which I knew you approved.* In this *situation I thought it due to truth,* as well as that it would be most agreeable *to yourself,* and *accordingly took the liberty to state some of your opinions on the favorable side.* I am informed that copies or extracts of a letter *from you were handed about at the Mary^d Convention, with a like view of impeding the ratification.*

N. Hampshire ratified the Constitution on the 20th Ult;[2] and made the ninth State. The votes stood 57 for and 46 ag^st^ the measure. S. Carolina had previously ratified by a very great majority.[3] The Convention of N. Carolina is now sitting. At one moment the sense of that State was considered

[1] Italics for cypher. [2] June 21, really. [3] May 23.

TO THOMAS JEFFERSON. MAD. MSS.

NEW YORK, Augst 10, 1788.

DEAR SIR,

Mr. Warville Brissot has just arrived here, and I seize an opportunity suddenly brought to my knowledge to thank you for your several favors, and particularly for the pedometer. Answers to the letters must be put off for the next opportunity.

My last went off just as a vote was taken in the Convention of this State which foretold the ratification of the new Government. The latter act soon followed and is inclosed. The form of it is remarkable. I inclose also a circular address to the other States on the subject of amendments, from which mischiefs are apprehended. The great danger in the present crisis is that if another Convention should be soon assembled it would terminate in discord, or in alterations of the federal system which would throw back *essential* powers into the State Legislatures. The delay of a few years will assuage the jealousies which have been artificially created by designing men and will at the same time point out the faults which really call for amendment. At present the public mind is neither sufficiently cool nor sufficiently informed for so delicate an operation.

The Convention of North Carolina met on the 21st Ult: Not a word has yet been heard from its deliberations. Rhode Island has not resumed the subject since it was referred to & rejected by the people in their several Towns.

Congress have been employed for several weeks on

Transactions was complied with in part only, the 1st volume being not to be had. I have enquired of a Delegate here from Rhode Island for further information concerning W. S. Brown, but can learn nothing precise. I shall continue my enquiries, and let you know hereafter the result.

July 26.—We just hear that the Convention of this State have determined by a small majority to exclude from the ratification anything involving a condition & to content themselves with recommending the alterations wished for.[1]

As this will go by way of Holland I consider its reaching you as extremely uncertain. I forbear therefore to enter further into our public affairs at this time. If the packets should not be discontinued, which is surmised by some, I shall soon have an opportunity of writing again. In the mean time I remain with the sincerest affection

Your friend & Servt

P. S. Crops in Virginia of all sorts were very promising when I left the State. This was the case also generally throught the States I passed thro', with local exceptions produced in the wheat fields by a destructive insect which goes under the name of the Hessian fly. It made its first appearance several years ago on Long Island, from which it has spread over half this State and a great part of New Jersey, and seems to be making an annual progress in every direction.

[1] New York ratified July 26.

TO THOMAS JEFFERSON. MAD. MSS.

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Congress have been employed for several weeks on

the arrangement of times & place for bringing the new Government into agency.[1] The first has been agreed on though not definitively, & make it pretty certain that the first meeting will be held in the third week in March. The place has been a subject of much discussion and continues to be uncertain. Philad[a] as least eccentric of any place capable of affording due accommodations and a respectable outset to the Government was the first proposed. The affirmative votes were N. Hampshire, Connecticut, Pen[a], Mary[d], Virg[a], and N. Carolina. Delaware was present & in favor of that place, but one of its Delegates wishing to have a question on Wilmington previous to a final determination divided that State and negatived the motion. N. York came next in view, to which was opposed first Lancaster which failed and then Baltimore, which to the surprise of every body was carried by seven States. S. Carolina which had preferred N. York to the two other more Southern positions unexpectedly concurring in this. The vote however was soon rescinded, the State of S. Carolina receding the Eastern States remonstrating against, and few seriously urging, the eligibility of Baltimore. At present the question lies as it was originally supposed to do, between N. York & Philad[a], and nothing can be more uncertain than the event of it. Rhode Island which alone was dis-

[1] The struggle to secure the capital on the banks of the Potomac River began in Congress with a resolution offered May 10, 1787, by Richard Henry Lee in favor of Georgetown (*Journals of Congress*, Ed. 1801, xii, 51). The progress of the question up to the time the new government went into operation is accurately traced in Madison's letters. See also *Journals of Congress*, Ed. 1801, xiii, 62, *et seq.*

posed to give the casting vote to N. York, has refused to give any final vote for arranging & carrying into effect a system to which that State is opposed, and both the delegates have returned home.

Col. Carrington tells me [he] has sent you the first volume of the federalist, and adds the 2d by this conveyance. I believe I never have yet *mentioned* [1] *to you that publication. It was undertaken last fall by Jay, Hamilton, and myself.* The *proposal came from the two former.* The *execution was thrown, by the sickness of Jay, mostly on the two others.* Though *carried on in concert, the writers are not mutually answerable* for *all the ideas of each other,* there being *seldom time for even a perusal* of the *pieces by any but the writer before they were wanted at the press,* and *sometimes hardly by the writer himself.*

I have not a moment for a line to Mazzei. Tell him I have recd his books & shall attempt to get them disposed of. I fear his calculations will not be fulfilled by the demand for them here in the French language. His affair with Dorhman stands as it did. Of his affair with Foster Webb I can say nothing. I suspect it will turn out badly.

Yrs affecly

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

NEW YORK, August 11, 1788.

DEAR SIR,

The length of the interval since my last has proceeded from a daily expectation of being able to

[1] Italics for cypher.

communicate the arrangements for introducing the new Government. The times necessary to be fixed by Congress have been many days agreed on. The place of meeting has undergone many vicissitudes and is still as uncertain as ever. Philadelphia was first named by a member from Connecticut, and was negatived by the voice of one from Delaware, who wished to make an experiment for Wilmington. New York came next into view. Lancaster was opposed to it and failed. Baltimore was next tried and to the surprize of every one had seven votes, South Carolina joining the Southern States and Pennsylvania in the question. It was not difficult to foresee that such a vote could not stand. Accordingly the next day, New York carried it on a second trial, and at present fills the blank. Its success however was owing to Rhode Island whose Delegates have refused to vote on the final question and have actually gone home. There are not at present seven States for any place, and the result must depend (unless Rhode Island should return with instructions as is *given out*) on the comparative flexibility of the Northern and Southern delegations. In ordinary cases this would not augur well to the latter. In the existing one something may be hoped from the palpable unreasonableness of the pretensions of N. York, which has 17 Rep^{s} & 8 Senators on one side agst. 42 Rep^{s} & 16 Senators on the other; which is not more than three hundred miles from the Eastern Extreme Metropolis; and not less than 4 times that distance from the Southern, and which

has no reference at all to the accommodation of the Western Country. I am persuaded also that if the first position be taken here the second will not be taken on the Potowmac & that this consideration is among the motives of those who advocate N. York. Indeed I *know* the latter to be one of the motives.

. . . . . .

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK Aug^st 15 1788 [1]

DEAR SIR

I have been duly favored with yours of the 3^d^ instant. The length of the interval since my last has proceeded from a daily expectation of being able to communicate the final arrangement for introducing the new Government. The place of meeting has undergone much discussion as you conjectured and still remains to be fixed. Philad^a^ was first named, & negatived by a voice from Delaware. N. York came forward next. Lancaster was opposed to it & failed. Baltimore was next tried and to the surprise of every one had seven votes. It was easy to see that that ground had it been free from objection was not maintainable, accordingly the next day N. York was inserted in the place of it with the aid of the vote of Rhode Island. Rhode Island has refused to give a final vote in the business and has actually retired from Congress. The question will now be resumed between N. York & Philad^a^ It was much to be

[1] This letter endorsed by Washington 11 Aug., 1788.

wished that a fit place for a respectable outset to the Gov[t] could be found more central than either. The former is inadmissible if any regard is to be had to the Southern or Western Country. It is so with me for another reason, that it tends to stop the final & permanent seat short of the Potowmac certainly, and probably in the State of N. Jersey. I *know* this to be one of the views of the Advocates for N. York. The only chance the Potowmac has is to get things in such a train that a coalition may take place between the Southern & Eastern States on the subject and still more than the final seat may be undecided for two or three years, within which period the Western & S Western population will enter more into the estimate. Wherever Congress may be, the choice if speedily made will not be sufficiently by that consideration. In this point of view I am of opinion Baltimore would have been unfriendly to the true object. It would have retained Congress but a moment, so many states being North of it, and dissatisfied with it, and would have produced a coalition among those States & a precipitate election of the permanent seat & an intermediate removal to a more northern position.

You will have seen the circular letter from the Convention of this State. It has a most pestilent tendency. If an early General Convention cannot be parried, it is seriously to be feared that the system which has resisted so many direct attacks may be at last successfully undermined by its enemies. It is now perhaps to be wished that Rho. Island may not

accede till this new crisis of danger be over.[1] Some think it would have been better if even N. York had held out till the operation of the Government could have dissipated the fears which artifice had created and the attempts resulting from those fears & artifices. We hear nothing yet from N. Carolina more than comes by way of Petersburg.

With highest respect & attachment

I remain Dr Sir your affect^e^ Servt

TO JAMES MADISON. MAD. MSS.

N. York Aug 18, 88

Hon^d^ Sir

I have rec^d^ your favor of the 9th inclosing a paper from Mr. Triplet. The case is stated so imperfectly that it is impossible for me to take any steps for bringing it before Congress if that should be proper. Mr R Morris I am told will be here soon, and I shall endeavor then to supply the omitted circumstances. In the mean time Mr Triplet may either make out a fuller statement & forward it or wait till he hears from me on the subject.

I have had no opportunity of doing any thing as to Anthony, since my last. John continues to decline. I think he is in a consumption, and will not stand it very long.

No late news of consequence has come from Europe. The war appears to be going on between the two imperial Courts & the Turks. And the affairs

[1] Rhode Island did not ratify until May 29, 1790.

of France portend a serious struggle between the royal authority & the spirit of liberty.

We just learn the fate of the Constitution in N. Carolina. Rho Island is however her only associate in the opposition and it will be hard indeed if those two States should endanger a system which has been ratified by the eleven others. Congress have not yet finally settled the arrangements for putting the new Government in operation. The place for its first meeting excites the difficulty. The Eastern States with N. York contend for this City [illegible] of the other States unite on a more central position.

Tell my brother Ambrose if you please that he must draw on Mr Shepherd for the price of the Negro boy for the French Marchioness On a second & more accurate examination of my papers I have found your loan office certificates. With affect[e] regards to the family I remain

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TO EDMUND PENDLETON.

CHIC. HIST. SOC. MSS.

NEW YORK Aug. 22 88.

MY DEAR FRIEND

I have your favor of the 13th. The effect of Clinton's circular letter in Virg[a] does not surprise me.[1] It is a signal of concord and hope to the

[1] New York's ratification was coupled with an expression of "full confidence" that amendments would be accepted and proposed a second federal convention to formulate them, and a circular inviting the coöperation of the other States was sent out.—Hunt's *Life of Madison*, 159.

enemies of the Constitution every where, and will I fear prove extremely dangerous. Notwithstanding your remarks on the subject I cannot but think that an *early* convention will be an unavoided measure. It will evidently be the offspring of party & passion, and will probably for that reason alone be the parent of error and public injury. It is pretty clear that a majority of the people of the Union are in favor of the Constitution as it stands, or at least are not dissatisfied with it in p^{t} form; or if this be not the case it is at least clear that a greater proportion unite in that system than are likely to unite in any other theory. Should radical alterations take place therefore they will not result from the deliberate sense of the people, but will be obtained by management, or extorted by menaces, and will be a real sacrifice of the public will as well as of the public good, to the views of individuals & perhaps the ambition of the State Legislature.

Congress have come to no final decision as to the place for Convening the new Govern^{t}. It is unfortunate because a question now between N. & South, and notwithstanding the palpable unreasonableness of the thing, an adherence to N. York in preference to any more central position seems to grow stronger & stronger, and upon grounds which tend to keep Congress here till a permanent seat be established. In this point of view I own the business has a serious aspect, considering the injustice & oppression to the S. Western and Western parts of the Union.

Y^{r} afec^{t}

TO THOMAS JEFFERSON. MAD. MSS.

NEW YORK, Aug^st^ 23, 1788.

DEAR SIR,

My last went via England, in the hands of a Swiss gentleman who had married an American lady, and was returning with her to his own Country. He proposed to take Paris in his way. By that opportunity I inclosed copies of the proceedings of this State on the subject of the Constitution.

North Carolina was then in Convention, and it was generally expected would in some form or other have fallen into the general stream. The event has disappointed us. It appears that a large majority has decided against the Constitution as it stands, and according to the information here received has made the alterations proposed by Virginia the conditions on which alone that State will unite with the others. Whether this be the precise state of the case I cannot say. It seems at least certain that she has either rejected the Constitution, or annexed conditions precedent to her ratification. It cannot be doubted that this bold step is to be ascribed in part to the influence of the minority in Virginia which lies mostly in the Southern part of the State, and to the management of its leader. It is in part ascribed also by some to assurances transmitted from leading individuals here, that New York would set the example of rejection. The event, whatever may have been its cause, with the tendency of the circular letter from the Convention of N. York, has somewhat changed the aspect of things and has given

fresh hopes and exertions to those who opposed the Constitution. The object with them now will be to effect an early Convention composed of men who will essentially mutilate the system, particularly in the article of taxation, without which in my opinion the System cannot answer the purposes for which it was intended. An early Convention is in every view to be dreaded in the present temper of America. A very Short period of delay would produce the double advantage of diminishing the heat and increasing the light of all parties. A trial for one year will probably suggest more real amendments than all the antecedent speculations of our most sagacious politicians.

Congress have not yet decided on the arrangements for inaugurating the new Government. The place of its first meeting continues to divide the Northern and Southern members, though with a few exceptions to these general descriptions of the parties. The departure of Rho. Island and the refusal of N. Carolina in consequence of the late event there to vote in the question, threatens a disagreeable issue to the business, there being now an apparent impossibility of obtaining seven States for any one place. The three Eastern States & N. York, reinforced by S. Carolina, and as yet by N. Jersey, give a plurality of votes in favor of this City. The advocates for a more central position however though less numerous, seemed very determined not to yield to what they call a shameful partiality to one extremity of the Continent. It will be certainly of

far more importance under the proposed than the present system that regard should be had to centrality whether we consider the number of members belonging to the Government, the diffusive manner in which they will be appointed, or the increased resort of individuals having business with the Legislative, Executive, & Judiciary departments.

If the Western Country be taken into view, as it certainly ought the reasoning is still further corroborated. There is good ground to believe that a very *jealous* [1] *eye will be* kept in that *quarter on in*attention *to it, and particularly when* involving a *seeming advantage to the eastern States*, which have been *rendered extremely suspicious* and *obnoxious* by the *Mississippi project*. There is even *good ground to believe that Spain is taking* advantage of *this disgust in kentucky*, and is *actually endeavoring* to *seduce them from the union, holding out a darling object which will never be obtained by them as part of the union*. This is a *fact as certain as it is important but which I hint in strict confidence*, and with *a request* that no suspicion may be excited of its being *known, particularly thro the channel of me*. I have this moment notice that I must send off my letter instantly, or lose the conveyance. I must consequently defer further communications till another opportunity.

Along with this you will receive a copy of the report you desired from Mr. Thomson, and a copy of the Federalist, a publication mentioned in my last.

[1] Italics for cypher.

TO GEORGE WASHINGTON. [illegible]

New York, [illegible]

Dear Sir,—

I was yesterday favored with yours of the [illegible], [illegible], under the same cover with the papers from Mr. Pleasants. The circular letter from this State is certainly a matter of as much regret as the [illegible] with which it passed is matter of surprise. I find it is every where, and particularly in Virginia, and hold it as the signal for united exertions in pursuit of early amendments. In Pennsylvania the antifederal leaders are I understand soon to have a meeting at Harrisburg, in order to concert proper arrangements on the part of that State. I begin now to accede to the opinion, which has been avowed for some time by many, that the circumstances involved in the ratification of New York will prove more injurious than a rejection would have done. The latter we have rather alarmed the well meaning antifederalists elsewhere, would have had no ill effect on the other party, would have excited the indignation of the neighbouring States, and would have been necessarily followed by a speedy reconsideration of the subject. I am not able to account for the concurrence of the federal part of the Convention in the circular address, on any other principle than the determination to purchase an immediate ratification in any form or at any price, rather than disappoint this City of a chance for the new Congress. This solution is sufficiently justified by the eagerness displayed on this point, and the evident disposition to risk and sacrifice everything to it. Unfortunately the disagreeable question continues to be undecided, and is now in a state more perplexing than ever. By the last vote taken, the whole arrangement was thrown out, and the departure of Rho. Island & the refusal of N. Carolina to participate further in the business, has left eleven States only to take it up anew. In this number there are not seven States for any place, and the disposition to relax as usually happens, decreases with the progress of the contest. What and when the issue is to be is really more than I can foresee. It is truly mortifying that the extent of

the new Government should be immediately preceded by such a display of locality, as portends the continuance of the evil which has dishonored the old and gives countenance to some of the most popular arguments which have been inculcated by the southern antifederalists.

New York has appeared to me extremely objectionable on the following grounds. It violates too palpably the simple and obvious principle that the seat of public business should be made as equally convenient to every part of the public, as the requisite accommodations for executing the business will permit. This consideration has the more weight, as well on account of the catholic spirit professed by the Constitution, as of the increased resort which it will require from every quarter of the continent. It seems to be particularly essential that an eye should be had in all our public arrangements to the accommodation of the Western Country, which, perhaps cannot be sufficiently gratified at any rate, but which might be furnished with new fuel to its jealousy by being summoned to the sea shore & almost at one end of the Continent. There are reasons, but of too confidential a nature for any other than verbal communication, which make it of critical importance that neither cause nor pretext should be given for distrusts in that quarter of the policy towards it in this. I have apprehended also that a preference so favorable to the Eastern States would be represented in the Southern as a decisive proof of the preponderance of that scale, and a justification of all the antifederal arguments drawn from that danger. Adding to all this, the recollection that the first year or two will produce all the great arrangements under the new system, and which may fix its tone for a long time to come, it seems of real importance that the temporary residence of the new Congress, apart from its relation to the final residence, should not be thrown too much towards one extremity of the Union. It may perhaps be the more necessary to guard agst suspicions of partiality in this case, as the early measures of the new Government, including a navigation Act will of course be most favorable to this extremity.

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Augst 24, 1788.

DEAR SIR,—

I was yesterday favored with yours of the 17th, 18th, under the same cover with the papers from Mr. Pleasants. The circular letter from this State is certainly a matter of as much regret as the *unanimity* with which it passed is matter of surprize. I find it is every where, and particularly in Virginia laid hold of as the signal for united exertions in pursuit of *early* amendments. In Pennsylv^{a}, the antifederal leaders are I understand soon to have a meeting at Harrisburg, in order to concert proper arrangements on the part of that State. I begin now to accede to the opinion, which has been avowed for some time by many, that the circumstances involved in the ratification of New York will prove more injurious than a rejection would have done. The latter w^{d} have rather alarmed the well meaning antifederalists elsewhere, would have had no ill effect on the other party, would have excited the indignation of the neighbouring States, and would have been necessarily followed by a speedy reconsideration of the subject. I am not able to account for the concurrence of the federal part of the Convention in the circular address, on any other principle than the determination to purchase an immediate ratification in any form or at any price, rather than disappoint this City of a chance for the new Congress. This solution is sufficiently justified by the eagerness displayed on this point, and the evident disposition to risk and sacrifice everything to it. Unfortunately the disagreeable question continues to be undecided, and is now in a state more perplexing than ever. By the last vote taken, the whole arrangement was thrown out, and the departure of Rho. Island & the refusal of N. Carolina to participate further in the business, has left eleven States only to take it up anew. In this number there are not seven States for any place, and the disposition to relax as usually happens, decreases with the progress of the contest. What and when the issue is to be is really more than I can foresee. It is truly mortifying that the outset of

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But I own that I am much influenced by a view to the final residence, which I conceive to be more likely to be properly chosen in Philad[a] than in New York. The extreme excentricity of the latter will certainly in my opinion bring on a premature, and consequently an improper choice. This policy is avowed by some of the sticklers for this place, and is known to prevail with the bulk of them. People from the interior parts of Georgia, S. C., N. C., & V[a] & Kentucky will never patiently repeat their trips to this remote situation, especially as the Legislative Sessions will be held in the Winter Season. Should no other consequence take place than a frequent or early agitation of this contentious subject, it would form a strong objection ag[st] N. York.

Were there reason to fear a repugnance to the establishment of a final seat, or a choice of a commercial City for the purpose, I should be strongly tempted to shun Philad at all events. But my only fear on the first head is of a precipitancy in carrying that part of the federal Constitution into effect, and on the second the public sentiment as well as other considerations is so fixedly opposed as to banish the danger from my apprehensions. Judging from my own experience on this subject, I conclude that from motives of one sort or another ten States at least, (that is, 5 from each end of the Union,) to say nothing of the Western States will at any proper time be ready to remove from Philad[a]. The only difficulty that can arise will be that of agreeing on the place to be finally removed to and it is from that difficulty alone, and the delay incident to it, that I derive my hope in favor of the banks of the Potowmac. There are some other combinations on the subject into which the discussion of it has led me, but I have already troubled you with more I fear than may deserve your attention.

The Newspapers herewith inclosed contain the European intelligence brought by the last packets from England.

With every sentiment of esteem & attachment I remain Dear Sir, your Obed[t] & Affect[e] serv[t].

TO JAMES MADISON. MAD. MSS.

N. YORK Sepr 6. 1788.

HON^{D} SIR

I forward this by the mail expecting it will be at Fred^{g} in time for Mr A Shepherd who left this a day or two ago. Nothing much of consequence has occurred since my last. The current intelligence you will find in the inclosed gazettes. The Anti-federalists are everywhere exerting themselves for an early Convention. The circular letter from this State, and the rejection of N. Carolina, give them great spirits. Virginia, I suppose from the temper of the present Legislature will co-operate in the plan.

Congress have not yet settled the place for the meeting of the new Gov^{t}. It is most probable that the advocates for N. York who form at present the greater number, will prevail. In that case, altho. I think it a very unreasonable thing for the South^{n} & Western parts of the Union, the best face must be put on it.

I have not yet been able to determine whether Anthony is still in Philad^{a} I am inclined to believe he is not. Indeed some circumstances w^{d} almost tempt me to think he never has been there. On this supposition John must have practiced a gross deception on us. He could have no motive for this unless it were a spite to Billey, which I fancy he entertained. But the deception could hardly promise a gratification that would prompt it. He is still very sick, and his recovery not very probable.

I find on enquiry that the loan office Certificates

which I told you I had only mislaid, not lost, must go to N. Carolina for settlement. If an opp^{y} offers I shall accordingly send them thither unless otherwise directed by you.—I have not yet seen Mr Morris & have therefore not been able to do any thing in the affair of Mr Triplets. Remember me affect^{y} to my mother & the family and believe me y^{r} dutiful son.

TO EDMUND PENDLETON.

CHIC. HIST. SOC. MSS.

NEW YORK, Sep^{t} 14, 1788.

MY DEAR FRIEND:

Your favor of the 3rd instant would have been acknowledged two days ago but for the approaching completion of the arrangement for the new Gov^{t} which I wished to give you the earliest notice of. This subject has long employed Cong^{s} and has in its progress assumed a variety of shapes, some of them not a little perplexing. The times as finally settled are, Jan^{y}, for the choice of Electors, Feby for the choice of a President, and March for the meeting of the Congress, the place, the present seat of the fed^{l} gov^{t} The last point was carried by the yielding of the smaller to the inflexibility of the greater number. I have myself been ready for bringing it to this issue for some time, perceiving that further delay, could only discredit Cong^{s} and injure the object in view. Those who had opposed N. York along with me could not overcome their repugnance so soon. Maryland went away before the question was decided in

a temper which I believe would never have yielded. Delaware was equally inflexible, previous to our final assent a motion was made which tendered a blank for any place the majority would choose between the North River and the Potowmac. This being rejected the alternative remaining was to agree to N. York or to strangle the Gov^t^ in its birth. The former as the lesser evil was of course preferred and must now be made the best of. I acknowledge at the same time that I anticipate serious inconveniences from it. It will I fear be regarded as at once a proof of a preponderancy in the Eastern Scale, and of a disposition to profit of that advantage. It is but just however to remark that the event is in great degree to be charged on the South^n^ States which went into that scale. It will certainly entail the discussion on the new Govern^t^ which ought if possible to be exempt from such an additional cause of ferment in its councils. N. York will never be patiently suffered to remain even the temporary seat of Gov^t^ by those who will be obliged to resort to it from the Western & South^n^ parts of the Union. This temporary period must continue for several years, perhaps seven or eight, and within that period all the great business of the Union will be settled. I take it for granted that the first session will not pass without a renewal of the question, and that it will be attended with all the unpleasing circumstances which have just been experienced. In the last place, I consider the decision in favor of N. York as in a manner fatal to the just pretensions of the Potowmac to the permanent seat of

the Gov^t^ This is unquestionably the light in which many of the advocates for N. York view the matter. The Legislature of N. Jersey which lately met approved of the part taken by her delegates on the principle that the first meeting of the Gov^t^ at N. York would give the best possible chance for an early choice of the permanent seat, as this would do for a preference of Trenton. As the case now stands, the Susquehanna is probably the most that can be hoped for with no small danger of being stopped on the Delaware. Had any place South of the Delaware been obtained the Susquehannah at least would have been secured with a favorable chance for the Potowmac.

The result of the meeting at Harrisburg is I am told in the press & will of course be soon before the public. I am not acquainted with the particulars, or indeed with the general complexion of it. It has been said here that the meeting was so thin as to disappoint much the patrons of the scheme.

I am glad to hear that Mazzei's book is likely to be vendible. The copies allotted for this and several other markets will not I fear be so fortunate.

Y^rs^ affec^ly^

TO THOMAS JEFFERSON. MAD. MSS.

NEW YORK, Septr 21, 1788.

DEAR SIR,

Being informed of a circuitous opportunity to France I make use of it to forward the inclosures. By one of them you will find that Congress have

been at length brought into the true policy which is demanded by the situation of the Western Country. An additional resolution on the *secret*[1] *journal* puts an *end to all negociation with Spain*, referring the subject of a *treaty*, *after this* assertion *of right to the Mississippi*, *to the new government*.[2] The communication in my last will have shewn you the *crisis of things* in that *quarter*, *a crisis* however not particularly *known to Congress*, and will be a *key to* some of the *Kentucky toasts in the Virg*[a] Gazette.

The Circular letter from the New York Convention has rekindled an ardor among the opponents of

[1] Italics for cypher.

[2] Madison sent the resolutions to Washington Sept. 26:

"I subjoin two resolutions lately taken by Congress in relation to the Mississippi, which I hope may have a critical and salutary effect on the temper of our Western Brethren.

"In Congress, Sep[r] 16

"On report of the Committee, consisting of Mr. Hamilton, Mr. Madison, Mr. Williamson, Mr. Dane, and Mr. Edwards, to whom was referred the Report of the Sec[y] for For. Affairs on a motion of the Delegates of North Carolina, stating the uneasiness produced by a Report 'that Congress are disposed to treat with Spain for the surrender of their claim to the navigation of the River Mississippi,' and proposing a Resolution intended to remove such apprehensions,

"*Resolv[d]*, that the said Report not being founded in fact, the Delegates be at liberty to communicate all such circumstances as may be necessary to contradict the same and to remove misconceptions.

"*Resolv[d]*, that the free navigation of the River Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such.

"In addition to these resolutions which are not of a secret nature, another has passed arresting all negotiations with Spain, and handing over the subject thus freed from bias from any former proceedings, to the Ensuing Government. This last Resolution is entered on the Secret journal, but a tacit permission is given to the Members to make a *confidential* use of it."—*Wash. MSS.*

the federal Constitution for an *immediate* revision of it by another General Convention. You will find in one of the papers inclosed the result of the consultations in Pennsylvania on that subject. Mr. Henry and his friends in Virginia enter with great zeal into the scheme. Governor Randolph also espouses it; but with a wish to prevent if possible danger to the article which extends the power of the Government to internal as well as external taxation. It is observable that the views of the Pennsylv[a] meeting do not rhyme very well with those of the Southern advocates for a Convention; the objects most eagerly pursued by the latter being unnoticed in the Harrisburg proceedings. The effect of the circular letter on other States is less known. I conclude that it will be the same everywhere among those who opposed the Constitution, or contended for a conditional ratification of it. Whether an early Convention will be the result of this united effort, is more than can at this moment be foretold. The measure will certainly be industriously opposed in some parts of the Union, not only by those who wish for no alterations, but by others who would prefer the other mode provided in the Constitution, as most expedient at present, for introducing those supplemental safeguards to liberty ag[st] which no objections can be raised; and who would moreover approve of a Convention for amending the frame of the Government itself, as soon as time shall have somewhat corrected the feverish state of the public mind, and trial have pointed its attention to the true defects of the system.

You will find also by one of the papers inclosed that the arrangements have been compleated for bringing the new Government into action. The dispute concerning the place of its meeting was the principal cause of delay, the Eastern States with N. Jersey & S. Carolina being attached to N. York, and the others strenuous for a more central position. Philadelphia, Wilmington, Lancaster & Baltimore were successively tendered without effect by the latter, before they finally yielded to the superiority of members in favor of this City. I am afraid the decision will give a great handle to the Southern Antifederalists who have inculcated a jealousy of this end of the Continent. It is to be regretted also as entailing this pernicious question on the New Cong[s], who will have enough to do in adjusting the other delicate matters submitted to them. Another consideration of great weight with me is that the temporary residence here will probably end in a permanent one at Trenton, or at the farthest on the Susquehannah. A removal in the first instance beyond the Delaware would have removed the alternative to the Susquehannah and the Potowmac. The best chance of the latter depends on a delay of the permanent establishment for a few years, untill the Western and South Western population comes more into view. This delay cannot take place if so excentric a place as N. York is to be the intermediate seat of business.

To the other papers is added a little pamphlet on the Mohegan language. The observations deserve

the more attention as they are made by a man of known learning and character, and may aid researches into the primitive structure of language, as well as those on foot for comparing the American tribes with those on the Eastern frontier of the other continent.

In consequence of your letter to Mr. Jay on the subject of "outfit" &c., I had a conference with him, and he agreed to suggest the matter to Congress. This was done and his letter referred back to be reported on. The idea between us was that the reference should be *to*[1] *a Committee his letter* coming *in at a moment* when *I happened to be out* it was as in *course referred to his department.* His *answer suggested* that as *he might be thought eventually concerned* in *the question*, it was most *proper for the consideration of a committee.* I had *discovered that he was not struck* with the *peculiarities of your case even when insinuated to him.* How far the *committee will be so* is more *than I can yet say.* In general I have no doubt that both *it and Congress are well disposed.* But it is probable that the idea of a *precedent will beget much caution* and what *is worse there is little probability of* again having a *quorum of States for the business.*

I learn from Virginia that our crops both of corn & Tobacco (except in the lower Country where a storm has been hurtful) are likely to be very good. The latter has suffered in some degree from super-

[1] Italics for cypher.

flous rains, but the former has been proportionally benefited. Accept my most fervent wishes for your happiness.

Y^rs Affect^y

TO PHILIP MAZZEI [1]

NEW YORK Octr 8th. 1788.

DEAR SIR,

I have been favored with several letters from you since the date of my last; but some of them having been rec^d in Virginia I am not able now to acknowledge all of them by their respective dates. The date of the last was in May.

You ask me why I agreed to the constitution proposed by the Convention of Philad^a I answer because I thought it safe to the liberties of the people, and the best that could be obtained from the jarring interests of States, and the miscellaneous opinions of Politicians; and because experience has proved that the real danger to America & to liberty lies in the defect of *energy & stability* in the present establishments of the United States.—Had you been a member of that assembly and been impressed with the truths which our situation discloses, you would have concurred in the necessity which was felt by the other members. In your closet at Paris and with

[1] This letter was once the property of Guizot. It passed into the hands of Alfred Bovet, of Paris, a collector of MSS., and later into the collection of Mr Alexander Meyer Cohn, of Berlin, who has kindly furnished the editor with a copy, at the request of the American Ambassador at Berlin, His Excellency Charlemagne Tower.

the evils resulting from too much Government all over Europe fully in your view it is natural for you to run into criticisms dictated by an extreme on that side. Perhaps in your situation I should think and feel as you do. In mine I am sure you would think and feel as I do.

To the paragraph in your letter of the 9th. of May on the subject of a mission to Holland or Italy, I can say nothing more than that it is a business which belongs now to the new Gov^{t} or if I were to say more my friendship would guard you agst any reliance on such an event. In the first place nothing can be more uncertain than the nature of the system which will be adopted with regard to foreign affairs. And in the next place activity is a sort of merit which prejudice rates too high to be outweighed by any other sort of merit. The Americans are an enlightened and liberal people, compared with other nations, but they are not all philosophers. I have rec^{d} the copies of your book and have taken the measures proper for disposing of them. The number allowed to Virginia are selling there I am told very well. I am afraid the other portions will not be equally successful. The French language is the greater obstacle as many who can read it expect the work will be translated into a language they can read still better.

Derliman tells he means to remit you forthwith via London about £300 Sterling. If he does, and I flatter myself he will not fail, it will pass thro' the hands of Mr. Jefferson. His affairs here do not pro-

duce ready means but I hope you will be ultimately secured agst loss.

Are we ever to see you again in America? Here or elsewhere God bless you.

TO THOMAS JEFFERSON. MAD. MSS.

NEW YORK, Oc^{r} 17, 1788.

DEAR SIR,—

I have written a number of letters to you since my return here, and shall add this by another casual opportunity just notified to me by Mr. St. John. Your favor of July 31 came to hand the day before yesterday. The pamphlets of the Marquis Condorcet & Mr. Dupont referred to in it have also been received. Your other letters inclosed to the Delegation have been and will be disposed of as you wish; particularly those to Mr Eppes & Col. Lewis.

Nothing has been done on the subject of the *outfit*, there not having been a Congress of nine States for some time, nor even of seven for the last week. It is pretty certain that there will not again be a quorum of either number within the present year, and by no means certain that there will be one at all under the old Confederation. The Committee finding that nothing could be done have neglected to make a report as yet. I have spoken with a member of it in order to get one made, that the case may fall of course and in a favorable shape within the attention of the New Government. The fear of a precedent will probably lead to an allowance for a limited time of the *salary*,[1] *as enjoyed originally* by *foreign ministers*, in *preference to a separate allowance for outfit*. One of the *members* of the *treasury board*, who ought, if certain facts have *not escaped his memory*, *to witness the reasonableness of your* calculations, *takes occasion I find to impress a contrary idea*.

[1] Italics for cypher.

Fortunately *his influence will not be a very formidable obstacle to right.*

The States which have adopted the New Constitution are all proceeding to the arrangements for putting it into action in March next. Pennsylv[a] alone has as yet actually appointed deputies & that only for the Senate. My last mention that these were Mr. R. Morris & a Mr. McClay. How the other elections there & elsewhere will run is matter of uncertainty. The Presidency alone unites the conjectures of the public. The vice president is not at all marked out by the general voice. As the President will be from a Southern State, it falls almost of course for the other part of the Continent to supply the next in rank. South Carolina may however think of Mr. Rutledge unless it should be previously discovered that votes will be wasted on him. The only candidates in the Northern States brought forward with their known consent are *Handcock*[1] *and Adams*, and *between these it seems probable the question will lie.* Both of them *are objectionable & would I think be postponed* by the *general suffrage to several others* if they *would accept the place. Handcock* is *weak ambitious a courtier of popularity, given to low intrigue*, and *lately reunited by a factious friendship with S. Adams. J. Adams* has made *himself obnoxious to many*, particularly in the *Southern States by the political principles avowed in his book.* Others *recollecting his cabal during the war against general Washington*, knowing *his extravagant self-importance*, and *considering his preference of an unprofitable dignity* to some *place of emolument* better *adapted to private fortune as a proof of his* having *an eye to the presidency, conclude* that *he would not be a very cordial second to the General*, and that *an impatient ambition* might *even intrigue for a premature advancement.* The *danger would be the greater if* particular *factious characters*, as may be the case, *should get into the public councils. Adams* it appears, is *not unaware of* some *of the obstacles to his wish*, and *thro a letter*

[1] Italics for cypher.

to Smith has *thrown out popular sentiments as to the proposed president.*

The little pamphlet herewith inclosed will give you a collective view of the alterations which have been proposed for the new Constitution. Various and numerous as they appear they certainly omit many of the true grounds of opposition. The articles relating to Treaties, to paper money, and to contracts, created more enemies than all the errors in the System positive & negative put together. It is true nevertheless that not a few, particularly in Virginia have contended for the proposed alterations from the most honorable & patriotic motives; and that among the advocates for the Constitution there are some who wish for further guards to public liberty & individual rights. As far as these may consist of a constitutional declaration of the most essential rights, it is probable they will be added; though there are many who think such addition unnecessary, and not a few who think it misplaced in such a Constitution. There is scarce any point on which the party in opposition is so much divided as to its importance and its propriety. My own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect, nor been anxious to supply it even by *subsequent* amendment, for any other reason than that it is anxiously desired by others. I have favored it because I supposed it might be of use, and if properly executed could not be of disservice. I have not viewed it in an important light—1. because I conceive that in a certain degree, though not in the extent argued by Mr. Wilson, the rights in question are reserved by the manner in which the federal powers are granted. 2 because there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience in particular, if submitted to public definition would be narrowed much more than they are likely ever to

be by an assumed power. One of the objections in New England was that the Constitution by prohibiting religious tests, opened a door for Jews Turks & infidels. 3. because the limited powers of the federal Government and the jealousy of the subordinate Governments, afford a security which has not existed in the case of the State Governments, and exists in no other. 4. because experience proves the inefficacy of a bill of rights on those occasions when its controul is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of Conscience, it is well known that a religious establishment w^d^ have taken place in that State, if the Legislative majority had found as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now of one sect, the measure would still take place and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law has since created. Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents. This is a truth of great importance, but not yet sufficiently attended to; and is probably more strongly impressed on my mind by facts, and reflections suggested by them, than on yours which has contemplated abuses of power issuing from a very different quarter. Whereever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful & interested party than by a powerful and interested prince. The difference so far as it relates to the superiority of re-

publics over monarchies, lies in the less degree of probability that interest may prompt more abuses of power in the former than in the latter; and in the security in the former ag^st^ an oppression of more than the smaller part of the Society, whereas in the former [latter] it may be extended in a manner to the whole. The difference so far as it relates to the point in question—the efficacy of a bill of rights in controuling abuses of power—lies in this: that in a monarchy the latent force of the nation is superior to that of the Sovereign, and a solemn charter of popular rights must have a great effect, as a standard for trying the validity of public acts, and a signal for rousing & uniting the superior force of the community; whereas in a popular Government, the political and physical power may be considered as vested in the same hands, that is in a majority of the people, and, consequently the tyrannical will of the Sovereign is not [to] be controuled by the dread of an appeal to any other force within the community. What use then it may be asked can a bill of rights serve in popular Governments? I answer the two following which, though less essential than in other Governments, sufficiently recommend the precaution: 1. The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. 2. Altho. it be generally true as above stated that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter source; and on such, a bill of rights will be a good ground for an appeal to the sense of the community. Perhaps too there may be a certain degree of danger, that a succession of artful and ambitious rulers may by gradual & well timed advances, finally erect an independent Government on the subversion of liberty. Should this danger exist at all, it is prudent to guard ag^st^ it, especially when the precaution can do no injury. At the same time I

must own that I see no tendency in our Governments to danger on that side. It has been remarked that there is a tendency in all Governments to an augmentation of power at the expence of liberty. But the remark as usually understood does not appear to me well founded. Power when it has attained a certain degree of energy and independence goes on generally to further degrees. But when below that degree, the direct tendency is to further degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power. With this explanation the remark may be true; and in the latter sense only is it, in my opinion applicable to the Governments in America. It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much or too little power, and that the line which divides these extremes should be so inaccurately defined by experience.

Supposing a bill of rights to be proper the articles which ought to compose it, admit of much discussion. I am inclined to think that *absolute* restrictions in cases that are doubtful, or where emergencies may overrule them, ought to be avoided. The restrictions however strongly marked on paper will never be regarded when opposed to the decided sense of the public, and after repeated violations in extraordinary cases they will lose even their ordinary efficacy. Should a Rebellion or insurrection alarm the people as well as the Government, and a suspension of the Hab. Corp. be dictated by the alarm, no written prohibitions on earth would prevent the measure. Should an army in time of peace be gradually established in our neighborhood by Brit[a] or Spain, declarations on paper would have as little effect in preventing a standing force for the public safety. The best security ag[st] these evils is to remove the pretext for them. With regard to Monopolies, they are justly classed among the greatest nuisances in Government. But is it clear that as encouragements to literary works and ingenious discoveries, they are not too valuable to be wholly renounced? Would it not suffice to reserve in all

cases a right to the public to abolish the privilege at a price to be specified in the grant of it? Is there not also infinitely less danger of this abuse in our Governments than in most others? Monopolies are sacrifices of the many to the few. Where the power is in the few it is natural for them to sacrifice the many to their own partialities and corruptions. Where the power as with us is in the many not in the few the danger cannot be very great that the few will be thus favored. It is much more to be dreaded that the few will be unnecessarily sacrificed to the many.

I inclose a paper containing the late proceedings in Kentucky. I wish the ensuing Convention may take no step injurious to the character of the district, and favorable to the views of those who wish ill to the U. States. One of my late letters communicated some circumstances which will not fail to occur on perusing the objects of the proposed Convention in next month. Perhaps however there may be less connection between the two cases than at first one is ready to conjecture.

I am, D^r^ sir with the sincerest esteem & affect^n^,

Yours

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

NEW YORK, October 17, 1788.

DEAR SIR,

I have a letter from Mazzei & one from Mr. Jefferson which you will be good enough to dispose of. I have one from the former in which he begs me to add my importunities to you and Mr. Blair for speedy succour if possible. I have one from the latter but it contains nothing of much consequence. His public letters to which it refers have not yet been communicated from the office of Foreign Affairs. Through other authentic channels I learn that the States

General will pretty certainly be convened in May next. The efficacy of that cure for the public maladies will depend materially on the mode in which the deputies may be selected, which appears to be not yet settled. There is good reason also to presume, that, as the spirit which at present agitates the nation has been in a great measure caught from the American Revolution, so the result of the struggle there will be not a little affected by the character which liberty may receive from the experiment now on foot here. The tranquil and successful establishment of a great reform by the reason of the community, must give as much force to the doctrines urged on one side as a contrary event would do to the policy maintained on the other.

As Col. Carrington will be with you before this gets to hand, I leave it with him to detail all matters of a date previous to his departure. Of a subsequent date I recollect nothing worth adding. I requested him also to confer with you in full confidence on the appointments to the Senate and House of Representatives, so far as my friends may consider me in relation to either. He is fully possessed of my real sentiments, and will explain them more conveniently than can be done on paper. I mean not to decline an agency in launching the new Government if such should be assigned me in one of the Houses, and I prefer the House of Representatives, chiefly because, if I can render any service there, it can only be to the public, and, not even in imputation, to myself. At the same time my preference, I

own, is somewhat founded on the supposition that the arrangements for the popular elections may secure me against any competition which would require on my part any step that would speak a solicitude which I do not feel, or have the appearance of a spirit of electioneering which I despise.

I am led not only by a want of matter but by a cut I have just given my thumb and which makes writing tedious and disagreeable to conclude, with assurances of affection I am &c.

TO EDMUND PENDLETON. MAD. MSS.

NEW YORK, Octr 20th, 1788.

DEAR SIR,

I acknowledge with much pleasure your favor of the 6th instant. The "balmy" nature of the resolutions concerning the Mississippi will I hope have the effect you suggest; though the wounds given to some & the pretexts given to others by the proceedings which rendered them necessary, will not I fear be radically removed. The light in which the temporary seat of the new Government is viewed & represented by those who were governed by antecedent jealousies of this end of the Union, is a natural one, and the apprehension of it was among the most persuasive reasons with me for contending with some earnestness for a less eccentric position. A certain degree of impartiality or the appearance of it, is necessary in the most despotic Governments. In republics this may be considered as the vital principle of the Administration. And in a *federal* Republic

founded on local distinctions involving local jealousies, it ought to be attended to with a still more scrupulous exactness.

I am glad to find you concurring in the requisite expedients for preventing anti federal elections, and a premature Convention. The circular letter from this State has united and animated the efforts on the adverse side with respect to both these points. An early Convention threatens discord and mischief. It will be composed of the most heterogeneous characters—will be actuated by the party spirit reigning among their constituents—will comprehend men having insidious designs agst the Union—and can scarcely therefore terminate in harmony or the public good. Let the enemies to the System wait until some experience shall have taken place, and the business will be conducted with more light as well as with less heat. In the mean time the other mode of amendments may safely be employed to quiet the fears of many by supplying those further guards for private rights which can do no harm to the system in the judgment even of its most partial friends, and will even be approved by others who have steadily supported it.

It appears from late foreign intelligence that war is likely to spread its flames still farther among the unfortunate inhabitants of the old world. France is certainly enough occupied already with her internal fermentations. At present the struggle is merely between the Aristocracy and the Monarchy. The only chance in favor of the people lies in the mutual

attempts of the Competitors to make their side of the question the popular one. The late measures of the Court have that tendency. The nobility and Clergy who wish to accelerate the States General wish at the same time to have it formed on the antient model established on the feudal idea, which excluded the people almost altogether. The Court has at length agreed to convene this assembly in May, but is endeavouring to counteract the aristocratic policy, by admitting the people to a greater share of representation. In both the parties there are some real friends to liberty who will probably take advantage of circumstances to promote their object. Of this description on the anti court side is our friend the Marquis. It is not true I believe that he is in the Bastile but true that he is in *disgrace*, as the phrase there is.

TO GEORGE WASHINGTON. WASH. MSS.

N. York, Oct 21, 1788.

Dear Sir,

I send you the enclosed paper chiefly for the sake of the Edict which fixes on May for the meeting of the States general in France. Letters from Mr. Jefferson authenticate the document. They mention also the disgrace as it is called of the Marquis. The struggle at present in that Kingdom seems to be entirely between the Monarchy & aristocracy, and the hopes of the people merely in the competition of their enemies for their favor. It is probable however

that both the parties contain real friends to liberty who will make events subservient to their object.

The Count Moustier and the Marchioness Brehan are to set out this day for Mount Vernon. I take it for granted you are not only apprised of the intended visit, but of the time at which the guests may be expected.

The State of Connecticut has made choice of Doc^r^ Johnson and Mr. Elsworth for its Senators, and has referred that of its representatives to the people at large, every individual citizen to vote for every Representative.

I have not heretofore acknowledged your last favor, nothing material having turned up for some time, and the purpose of Col. Carrington to see you on his way to Virginia superseding all the ordinary communications through the epistolary channel. It gives me much pleasure to find that both the opposition at first and finally the accession to the vote fixing N. York for the first meeting of the New Congress has your approbation. My fears that the measure would be made a handle of by the opposition are confirmed in some degree by my late information from Virg^a^ Mr. Pendleton the Chancellor tells me he has already met taunts from that quarter on this specimen of Eastern equity & impartiality. Whether much noise will be made will depend on the policy which Mr. Henry may find it convenient to adopt. As N. York is at the head of his party, he may be induced by that circumstance not to make irritating reflections; though the fact is that the

party in this [State] which is with him is supposed to be indifferent & even secretly averse to the residence of Congress here. This however may not be known to him.

I am Dear Sir Yours most respectfully & Affecte[ly]

QUESTIONS FROM AND ANSWERS TO THE COUNT DE MOUSTIER, MINISTER PLENIPOTENTIARY OF FRANCE, OCTOBER 30, 1788.[1] MAD. MSS.

1. Quelle est l'opinion des habitans les plus instruits de la Virginie, sur le contrat de la ferme avec Mons. Rob. Morris et quel est le système qu'ils voudroient y substituer?

1. It is not easy to give a precise answer to this question, many of the best informed not having been led to communicate their opinions, and others having been directly or indirectly interested on one side or the other. It seems to have been rather the prevailing opinion that the Contract was more hurtful to the price of Tobacco, than a supply of the Farmer Gen[l] by purchases made in the English or other Foreign Markets. This opinion must be founded on a supposition that the mercantile sellers in Europe could more easily combine and counteract the monopoly than the Planters of America. It does not appear that those who dislike y[e] contract have particularly turned y[r] thoughts to a system proper to be substituted. The general idea seems to have been that some arrangement in France disarming the mon-

[1] The questions were accurately transcribed by Madison in the margin opposite the answers. The questions themselves were preceded by the following: "Questions, dont M. le C[te] de Moustier prie Monsieur Madison de vouloir bien lui addresser le solution, quand ses occupations le lui permiteront." Nothing came of this tentative negotiation evidently begun with the idea of some sort of reciprocity treaty between the United States and France; and by act of July 7, 1798, Congress abrogated all treaties with France, this being the only instance of such sweeping action towards a foreign country by this government.

7. La Virg[e] commence-t-elle à exporter elle même ses denrées et quelle est la proportion de sa navigation avec celle des autres nations pour le transport des Tabacs et autres articles?

7. of the Vessels entered between the above dates—The American amounted to 26,705 tons The British & those of other nations not in alliance, 26,903 The French & those of other nations in alliance 2,664. The law having required no other discriminations, the Custom House books do not furnish a more particular answer.

8. Comme les Americains desirent beaucoup d'obtenir de nouvelles faveurs dans nos Antilles, que pourroient-ils proposer pour faciliter un arrangement de cette nature sans trop préjudicier aux avantages que la France ne cesse de tirer de ses Colonies?

8. The answer to this important question ought to be the result of much information as well as consideration. At present Mr. M. is not prepared with such an one. Whenever he shall have formed an opinion on the subject which he thinks worth the attention of C[t] M. it shall be communicated.

OBSERVATIONS ON THE "DRAUGHT OF A CONSTITUTION FOR VIRGINIA." [1] MAD. MSS.

Senate.

The term of two years is too short. Six years are not more than sufficient. A Senate is to withstand the occasional impetuosities of the more numerous branch. The members ought therefore to derive a firmness from the tenure of their places. It ought to supply the defect of knowledge and experience incident to the other branch, there ought to be time given therefore for attain-

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imported as valued at the ports of delivery, between Sepr 1, '86, & July 20, '87, amounted to 949.444.00-7, excluding Salt, distilled spirits, wine, malt liquors, Cheese, Tea, Sugar, Coffee. These paid a duty ad quantitatem, & therefore the value does not appear. It need not be remarked that in all cases the entries subject to duty fall short of ye truth. The productions of the Islands most wanted in Virginia are Sugar & Coffee. Between Sepr 1, '86, & July 20, '87, were entered 2,126,673^{lbs} Sugar, & 147,591 of Coffee. Molasses also is wanted; and Taffia perhaps, in a small degree. Cotton is raised in Virginia as far as it is needed for domestic manufacture.

5. Est-il vraisemblable que les eaux de vie de France fassent tomber entièrement le Rum des Isles? A quoi peut se monter la consommation annuelle des vins de France en Virginie?

5. It would be very difficult for brandy *entirely* to supplant Rum. A moderate preference however would soon make it a formidable rival. The small encouragement hitherto given to brandy has had a very sensible effect in promoting the use of it, and as antecedent habits become weakened the use will spread of itself. The brandies (doubtless from France with very trifling exceptions) entered on the Custom House books between Sept. 1, 86, & July 20, 87, amounted to 10,630 Gallons; and it is conjectured that the direct importations not entered with the considerable quantity introduced by the way of Maryland where the duty has been lower, may amount to half as much. The rum entered within that period amounted to 499,083 Gallons the Gin to 9102½ Gal^{s}; & the cordials & other spirits to 4,169½ Gals.

The Wines entered within the above periods amounted to 109,948 Gal^{s}, on which quantity ab^{t} 40,000 Gal^{s} were French.

6. Se sert-on beaucoup du sel de France pour les salaisons et que faut-il faire pour en rendre l'usage plus commun?

6. French Salt is little if at all used in Virginia. The eye is displeased at its colour, and the supposition is favored by that circumstance that it is dirty and inferior to the British & other white Salt. The objection suggests the means of rendering the use more common.

7. La Virg[e] commence-t-elle à exporter elle même ses denrées et quelle est la proportion de sa navigation avec celle des autres nations pour le transport des Tabacs et autres articles?

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ing the qualifications necessary for that purpose. It ought finally to maintain that system and steadiness in public affairs without which no Government can prosper or be respectable. This cannot be done by a body undergoing a frequent change of its members. A Senate for six years will not be dangerous to liberty, on the contrary it will be one of its best guardians. By correcting the infirmities of popular Government, it will prevent that disgust agst that form which may otherwise produce a sudden transition to some very different one. It is no secret to any attentive & dispassionate observer of ye pol: situation of ye U. S., that the real danger to republican liberty has lurked in that cause.

The appointment of Senators by districts seems to be objectionable. A spirit of *locality* is inseparable from that mode. The evil is fully displayed in the County representations, the members of which are everywhere observed to lose sight of the aggregate interests of the Community, and even to sacrifice them to the interests or prejudices of their respective constituents. In general these local interests are miscalculated. But it is not impossible for a measure to be accommodated to the particular interests of every County or district, when considered by itself, and not so, when considered in relation to each other and to the whole State; in the same manner as the interests of individuals may be very different in a state of nature and in a Political union. The most effectual remedy for the local bias is to impress on the minds of the Senators an attention to the interest of the whole Society, by making them the choice of the whole Society, each citizen voting for every Senator. The objection here is that the fittest characters would not be sufficiently known to the people at large. But in free governments, merit and notoriety of character are rarely separated, and such a regulation would connect them more and more together. Should this mode of election be on the whole not approved, that established in Maryland presents a valuable alternative. The latter affords perhaps a greater security for the selection of merit. The inconveniences

chargeable on it are two: first that the Council of electors favors cabal. Against this the shortness of its existence is a good antidote, secondly that in a large State the meeting of the Electors must be expensive if they be paid, or badly attended if the service is onerous. To this it may be answered that in a case of such vast importance, the expence, which could not be great, ought to be disregarded. Whichever of these modes may be preferred, it cannot be amiss so far to admit the plan of districts as to restrain the choice to persons residing in different parts of the State. Such a regulation will produce a diffusive confidence in the Body, which is not less necessary than the other means of rendering it useful. In a State having large towns which can easily unite their votes the precaution would be essential to an immediate choice by the people at large. In Maryland no regard is paid to residence. And what is remarkable vacancies are filled by the Senate itself. This last is an obnoxious expedient and cannot in any point of view have much effect. It was probably meant to obviate the trouble of occasional meetings of the Electors. But the purpose might have been otherwise answered by allowing the unsuccessful candidates to supply vacancies according to the order of their standing on the list of votes, or by requiring provisional appointments to be made along with the positive ones. If an election by districts be unavoidable and the ideas here suggested be sound, the evil will be diminished in proportion to the extent given to the districts, taking two or more Senators from each district.

Electors.

The first question arising here is how far property ought to be made a qualification. There is a middle way to be taken which corresponds at once with the Theory of free Government and the lessons of experience. A freehold or equivalent of a certain value may be annexed to ye right of voting for Senators, & ye right left more at large in ye election of the other House. Examples of this distinction may be found in the Constitutions of several States particularly if I mistake not, of North Carolina & N.

York. This middle mode reconciles and secures the two cardinal objects of Government; the rights of persons, and the rights of property. The former will be sufficiently guarded by one branch, the latter more particularly by the other. Give all power to property, and ye indigent will be oppressed. Give it to the latter and the effect may be transposed. Give a defensive share to each and each will be secure. The necessity of thus guarding the rights of property was for obvious reasons unattended to in the commencement of the Revolution. In all the Governments which were considered as beacons to republican Patriots & lawgivers the rights of persons were subjected to those of property. The poor were sacrificed to the rich. In the existing state of American population & American property the two classes of rights were so little discriminated that a provision for the rights of persons was supposed to include of itself those of property, and it was natural to infer from the tendency of republican laws, that these different interests would be more and more identified. Experience and investigation have however produced more correct ideas on this subject. It is now observed that in all populous countries, the smaller part only can be interested in preserving the rights of property. It must be foreseen that America, and Kentucky itself will by degrees arrive at this stage of Society that in some parts of y Union a very great advance is already made towards it. It is well understood that interest leads to injustice as well where the opportunity is presented to bodies of men as to individuals; to an interested majority in a Republic, as to the interested minority in any other form of Government. The time to guard ag^st^ this danger is at the first forming of the Constitution, and in the present state of population when the bulk of the people have a sufficient interest in possession or in prospect to be attached to the rights of property, without being insufficiently attached to the rights of persons. Liberty not less than justice pleads for the policy here recommended. If *all* power be suffered to slide into hands not interested in the rights of

property which must be the case whenever a majority fall under that description, one of two things cannot fail to happen; either they will unite against the other description and become the dupes & instruments of ambition, or their poverty & dependence will render them the mercenary instruments of wealth. In either case liberty will be subverted: in the first by a despotism growing out of anarchy, in the second, by an oligarchy founded on corruption.

The second question under this head is whether the ballot be not a better mode than that of voting viva voce. The comparative experience of the States pursuing the different modes is in favor of the first. It is found less difficult to guard against fraud in that than against bribery in the other.

Exclusions.

Does not The exclusion of Ministers of the Gospel as such violate a fundamental principle of liberty by punishing a religious profession with the privation of a civil right? does it [not] violate another article of the plan itself which exempts religion from the cognizance of Civil power? does it not violate justice by at once taking away a right and prohibiting a compensation for it? does it not in fine violate impartiality by shutting the door agst the Ministers of one Religion and leaving it open for those of every other.

The re-eligibility of members after accepting offices of profit is so much opposed to the present way of thinking in America that any discussion of the subject would probably be a waste of time.

Limits of power.

It is at least questionable whether death ought to be confined to "Treason and murder." It would not therefore be prudent to tie the hands of Government in the manner here proposed. The prohibition of pardon, however specious in theory would have practical consequences which render it inadmissible. A single instance is a sufficient proof. The crime of treason is generally shared by a number, and often a very great number. It would be politically if not morally wrong to take away the lives of all

even if every individual were equally guilty. What name would be given to a severity which made no distinction between the legal & the moral offence—between the deluded multitude and their wicked leaders. A second trial would not avoid the difficulty; because the oaths of the jury would not permit them to hearken to any voice but the inexorable voice of the law.

The power of the Legislature to appoint any other than their own officers departs too far from the Theory which requires a separation of the great Dep[ts] of Government. One of the best securities against the creation of unnecessary offices or tyrannical powers is an exclusion of the authors from all share in filling the one, or influence in the execution of the other. The proper mode of appointing to offices will fall under another head.

Executive Governour. An election by the Legislature is liable to insuperable objections. It not only tends to faction intrigue and corruption, but leaves the Executive under the influence of an improper obligation to that department. An election by the people at large, as in this [1] & several other States—or by Electors as in the appointment of the Senate in Maryland, or, indeed, by the people through any other channel than their legislative representatives, seems to be far preferable. The ineligibility a second time, though not perhaps without advantages, is also liable to a variety of strong objections. It takes away one powerful motive to a faithful & useful administration, the desire of acquiring that title to a reappointment. By rendering a periodical change of men necessary, it discourages beneficial undertakings which require perseverance and system, or, as frequently happened in the Roman Consulate, either precipitates or prevents the execution of them. It may inspire desperate enterprises for the attainment of what is not attainable by legitimate means. It fetters the judgment and in-

[1] N. York, where these remarks were penned.—Madison's note.

clination of the Community; and in critical moments woul
either produce a violation of the Constitution or exclude
choice [which] might be essential to the public safety. Ad
to the whole, that by putting the Executive Magistrate in th
situation of the tenant of an unrenewable lease, it woul
tempt him to neglect the constitutional rights of his depart
ment, and to connive at usurpations by the Legislative de
partment, with which he may connect his future ambitio
or interest.

The clause restraining the first magistrate from the immedi
ate command of the military force would be made better b
excepting cases in which he should receive the sanction of th
two branches of the Legislature.

Council of State. The following variations are sug
gested. 1. The election to be made b
the people immediately, or thro' some other medium than th
Legislature. 2. A distributive choice should perhaps be se
cured as in the case of the Senate. 3. Instead of an ineligibilit
a second time, a rotation in the federal Senate, with a
abridgm[t] of the term, to be substituted.

The appointment to offices is, of all the functions of Re
publican & perhaps every other form of Government, th
most difficult to guard against abuse. Give it to a numerou
body, and you at once destroy all responsibility, and create
perpetual source of faction and corruption. Give it to th
Executive wholly, and it may be made an engine of improper
influence and favoritism. Suppose the power were divided
thus: let the Executive alone make all the subordinate ap
pointments, and the Gov[r] and Senate, as in the Fed[l] Const[n]
those of the superior order. It seems particularly fit that th
Judges, who are to form a distinct department should ow
their offices partly to each of the other departments, rathe
than wholly to either.

Judiciary. Much detail ought to be avoided
in the Constitutional regulation of thi
Department, that there may be room for changes which may

be demanded by the progressive changes in the state of our population. It is at least doubtful whether the number of Courts, the number of Judges, or even ye boundaries of Jurisdiction ought to be made unalterable but by a revisal of the Constitution. The precaution seems no otherwise necessary than as it may prevent sudden modifications of the establishment, or addition of obsequious Judges, for ye purpose of evading the checks of the Const^n^ & giv^s^ effect to some sinister policy of the Legis^re^. But might not the same object be otherwise attained? by prohibiting, for example, any innovations in those particulars without the consent of that department: or without the annual sanction of two or three successive Assemblies, over & above the other pre-requisites to the passage of a law.

The model here proposed for a Court of Appeals is not recommended by experience. It is found as might well be presumed that the members are always warped in their appellate decisions by an attachment to the principles and jurisdiction of their respective Courts, & still more so by the previous decision on ye case removed by appeal. The only efficient cure for the evil is to form a Court of Appeals, of distinct and select Judges. The expence ought not to be admitted as an objection 1. because the proper administration of Justice is of too essential a nature to be sacrificed to that consideration. 2. The number of inferior judges might in that case be lessened. 3. The whole department may be made to support itself by a judicious tax on law proceedings.

The excuse for non-attendance would be a more proper subject of enquiry somewhere else than in the Court to which the party belonged. Delicacy, mutual convenience &c, would soon reduce the regulation to mere form; or if not, it might become a disagreeable source of little irritations among ye members. A certificate from the local Court or some other local authority where the party might reside or happen to be detained from his duty, expressing the cause of absence as well as that it was judged to be satisfactory, might be safely

substituted. Few Judges would improperly claim their wages, if such a formality stood in the way. These observations are applicable to the Council of State.

A Court of Impeachments is among the most puzzling articles of a Republican Constitution; and it is far more easy to point out defects in any plan than to supply a cure for them. The diversified expedients adopted in the Constitutions of the several States prove how much the compilers were embarrassed on this subject. The plan here proposed varies from all of them, and is perhaps not less than any a proof of the difficulties which pressed the ingenuity of its author. The remarks arising on it are 1. That it seems not to square with reason that the right to impeach should be united to that of trying the impeachment, & consequently in a proportional degree, to that of sharing in the appointment of, or influence on the Tribunal to which the trial may belong. 2. As the Executive & Judiciary would form a majority of the Court, and either have a right to impeach, too much might depend on a combination of these departments. This objection would be still stronger if the members of the Assembly were capable as proposed of holding offices, and were amenable in that capacity to the Court. 3. The H. of Delegates and either of those departments could app^{t} a majority of ye Court. Here is another danger of combination, and the more to be apprehended as that branch of ye Legisl w^{d} also have the right to impeach, a right in their hands of itself sufficiently weighty; and as the power of the Court w^{d} extend to the head of the Ex, by whose independence the constit^{l} rights of that department are to be secured agst Legislative usurpations. 4. The dangers in the two last cases would be still more formidable, as the power extends not only to deprivation, but to future incapacity of office. In the case of all officers of sufficient importance to be objects of factious persecution, the latter branch of power is in every view of a delicate nature. In that of the Chief Magistrate it seems inadmissible, if he be chosen by the Legislature; and much more so, if im-

mediately by the people themselves. A temporary incapacitation is ye most that c^d^ be properly authorised.

The 2 great desiderata in a Court of Impeach^ts^ are 1. impartiality. 2. respectability—the first in order to a right, the second in order to a satisfactory decision. These characteristics are aimed at in the following modification Let the Senate be denied the right to impeach. Let ⅓ of the members be struck out, by alternate nominations of the prosecutors & party impeached; the remaining ⅔ to be the *stamen* of the Court. When the H. of Del: impeach let the Judges, or a certain proportion of them—and the Council of State be associated in the trial, when the Govr or Council impeaches, let the Judges only be associated; when the Judges impeach let the Council only be associated. But if the party impeached by the H. of Del^s^ be a member of the Ex. or Judic^y^, let that of which he is a member not be associated. If the party impeached belong to one & be impeached by the other of these branches, let neither of them be associated the decision being in this case left with the Senate alone; or if that be thought exceptionable, a few members might be added by ye H. of D^s^. ⅔ of the Court should in all cases be necessary to a conviction, & the Chief Magistrate *at least* should be exempt from a sentence of perpetual if not of temporary incapacity. It is extremely probable that a critical discussion of this outline may discover objections which do not occur. Some do occur; but appear not to be greater than are incident to any different modification of the Tribunal.

The establishment of trials by Jury & viva voce testimony in *all* cases and in *all* Courts, is, to say the least, a delicate experiment; and would most probably be either violated, or be found inconvenient.

Council of Revision.

A revisionary power is meant as a check to precipitate, to unjust, and to unconstitutional laws. These important ends would it is conceded be more effectually secured, without disarming the Legislature of its requisite authority, by requiring bills to be

separately communicated to the Exec: & Judic^{y} dep^{ts} If either of these object, let $\frac{2}{3}$, if both $\frac{3}{4}$ of each House be necessary to overrule the objection; and if either or both protest agst a bill as violating the Constitution, let it moreover be suspended notwithstanding the overruling proportion of the Assembly, until there shall have been a subsequent election of the H. of D^{s} and a re-passage of the bill by $\frac{2}{3}$ or $\frac{3}{4}$ of both Houses, as the case may be. It s^{d} not be allowed the Judges or y^{e} Executive to pronounce a law thus enacted unconstitu^{l} & invalid.

In the State Constitutions & indeed in the Fed^{l} one also, no provision is made for the case of a disagreement in expounding them; and as the Courts are generally the last in making ye decision, it results to them by refusing or not refusing to execute a law, to stamp it with its final character. This makes the Judiciary Dep^{t} paramount in fact to the Legislature, which was never intended and can never be proper.

The extension of the Hab^{s} Corp^{s} to the cases in which it has been usually suspended, merits consideration at least. If there be emergencies which call for such a suspension, it can have no effect to prohibit it, because the prohibition will assuredly give way to the impulse of the moment; or rather it will have the bad effect of facilitating other violations that may be less necessary. The Exemption of the press from liability in every case for *true facts* is also an innovation and as such ought to be well considered. This essential branch of liberty is perhaps in more danger of being interrupted by local tumults, or the silent awe of a predominant party, than by any direct attacks of Power.

TO EDMUND RANDOLPH.

CHIC. HIST. SOC. MSS.

N. York Novr 2, 1788.

My dear friend,

I rec'd yesterday your favor of the 23^{d} ult. The first countenance of the assembly corresponds with

the picture which my imagination had formed of it. The views of the greater part of the opposition to the federal government, and particularly of its principal leader, have ever since the Convention, been regarded by me as permanently hostile, and likely to produce every effort that might endanger or embarrass it.[1] The defects which drew forth objections from many quarters, were evidently of little consequence in the eye of M^r H—ry. His own arguments proved it. His enmity was levelled, as he did not *scruple* to insinuate ag^st the *whole system;* and the destruction of the whole system I take to be still the secret wish of his heart, and the real object of his pursuit. If temperate and rational alterations only were his plan, is it conceivable that his coalition and patronage would be extended to men whose particular ideas on the subject must differ more from his own than of others who share most liberally in his hatred?

My last letter with Col. Carrington's communications to which it referred will have sufficiently explained my sentiments with regard to the Legislative Service under the new Constitution. My first wish is to see the Government put into quiet and success-

[1] October 27, Henry introduced in the Virginia Assembly resolutions setting forth that "many of the great, essential, and unalienable rights of freemen, if not cancelled, were rendered insecure under the Constitution," and that application should therefore be made to the first congress under the constitution "to call a second convention for proposing amendments to it." The resolutions and an address transmitting them to the States were adopted by an overwhelming vote.—George Lee Turberville to Madison, October 27 and November 10, 1788, N. Y. Pub. Lib. (Lenox) MSS.

ful operation; and to afford any service, that may be acceptable from me, for that purpose. My second wish if that were to be consulted, would prefer, for reasons formerly hinted, an opportunity of contributing that service in the House of Repˢ rather than in the Senate; provided the opportunity be attainable from the spontaneous suffrage of the Constituents. Should the real friends to the Constitution think this preference inconsistent with any primary object, as Col. Carrington tells me is the case with some who are entitled to peculiar respect, and view my renouncing it as of any material consequence, I shall not hesitate to comply.—You will not infer from the freedom with which these observations are made, that I am in the least unaware of the probability that whatever my inclinations or those of my friends may be, they are likely to be of little avail in the present case. I take it for certain that a clear majority of the assembly are enimies to the Govᵗ and I have no reason to suppose that I can be less obnoxious than others on the opposite side. An election into the Senate therefore can hardly come into question. I know also that a good deal will depend on the arrangements for the election of the other branch; and that much may depend moreover on the steps to be taken by the candidates which will not be taken by me. Here again therefore there must be great uncertainty, if not improbability of my election. With these circumstances in view it is impossible that I can be the dupe of false calculations even if I were in other cases disposed to

indulge them. I trust it is equally impossible for the result whatever it may be, to rob me of any reflections which enter into the internal fund of comfort and happiness. Popular favor or disfavor, is no criterion of the character maintained with those whose esteem an honorable ambition must court. Much less can it be a criterion of that maintained with oneself. And when the spirit of party directs the public voice, it must be a little mind indeed that can suffer in its own estimation, or apprehend danger of suffering in that of others.

The Sep[r] British Packet arrived yesterday, but I do not find that she makes any addition to the stock of European intelligence. The change in the French Minister is the only event of late date of much consequence; and that had arrived through several other channels. I do not know that it is even yet authenticited; but it seems to be doubted by no one, particularly among those who can best decide on its credibility.

With the utmost affection I am my dear sir

Y[rs] Sincerely.

COPY IN SUBSTANCE OF A LETTER TO G. L. TURBERVILLE, ESQ. MAD. MSS.

N. YORK, Nov[r] 2, 1788.

DEAR SIR,

Your favor of the 20th Ult. not having got into my hands in time to be acknowledged by the last mail, I have now the additional pleasure of acknowl-

edging along with it your favor of the 24, which I rec^{d} yesterday.

You wish to know my sentiments on the project of another general Convention as suggested by New York. I shall give them to you with great frankness, though I am aware they may not coincide with those in fashion at Richmond or even with your own. I am not of the number if there be any such, who think the Constitution lately adopted a faultless work. On the contrary there are amendments wch I wished it to have received before it issued from the place in which it was formed. These amendments I still think ought to be made, according to the apparent sense of America and some of them at least, I presume will be made. There are others concerning which doubts are entertained by many, and which have both advocates and opponents on each side of the main question. These I think ought to receive the light of actual experiment, before it would be prudent to admit them into the Constitution. With respect to the first class, the only question is which of the two modes provided be most eligible for the discussion and adoption of them. The objections agst a Convention which give a preference to the other mode in my judgment are the following 1. It will add to the difference among the States on the merits, another and an unnecessary difference concerning the mode. There are amendments which in themselves will probably be agreed to by all the States, and pretty certainly by the requisite proportion of them. If they be contended

for in the mode of a Convention, there are unquestionably a number of States who will be so averse and apprehensive as to the mode, that they will reject the merits rather than agree to the mode. A Convention therefore does not appear to be the most convenient or probable Channel for getting to the object. 2. A Convention cannot be called without the unanimous consent of the parties who are to be bound by it, if first principles are to be recurred to; or without the previous application of $\frac{2}{3}$ of the State legislatures, if the forms of the Constitution are to be pursued. The difficulties in either of these cases must evidently be much greater than will attend the origination of amendments in Congress, which may be done at the instance of a single State Legislature, or even without a single instruction on the subject. 3. If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partizans on both sides; it w^{d} probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very

foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention, which assembled under every propitious circumstance, I should tremble for the result of a Second, meeting in the present temper of America and under all the disadvantages I have mentioned. 4. It is not unworthy of consideration that the prospect of a second Convention would be viewed by all Europe as a dark and threatening Cloud hanging over the Constitution just established, and, perhaps over the Union itself; and w^{d} therefore suspend at least the advantages this great event has promised us on that side. It is a well-known fact that this event has filled that quarter of the Globe with equal wonder and veneration, that its influence is already secretly but powerfully working in favor of liberty in France, and it is fairly to be inferred that the final event there may be materially affected by the prospect of things here. We are not sufficiently sensible of the importance of the example which this Country may give to the world, nor sufficiently attentive to the advantages we may reap from the late reform, if we avoid bringing it into danger. The last loan in Holland and that alone, saved the U. S. from Bankruptcy in Europe; and that loan was obtained from a belief that the Constitution then depending w^{d} be certainly speedily, quietly, and finally established, & by that means put

America into a permanent capacity to discharge with honor & punctuality all her engagements.

TO GEORGE WASHINGTON. WASH. MSS.

N. York, Novr 5th, 1788.

Dear Sir,

The inclosed memorandum was put into my hands by Mr. St. John, the French Consul. He is a very worthy man & entitled, by his philanthropy and zealous patronage of whatever he deems useful, to much esteem and regard. You will therefore oblige me by putting it in my power to afford him the little gratification he asks. I have another request to trouble you with, which concerns myself. Col. H. Lee tells me that he has purchased the tract of land thro' which the Canal at the great falls is to run, and on which the basin will be, for £4000. The tract contains 500 Acres only and is under the incumbrance of a Rent of £150 Sterl^{g} per annum; but, on the other hand derives from its situation, as he supposes, a certain prospect of becoming immensely valuable. He paints it in short as the seat of an early Town, the lots of which will be immediately productive, and possessing other peculiar advantages which make the bargain inestimable. In addition to many instances of his friendship he tenders me a part in it, and urges my acceptance on grounds of advantage to myself alone. I am thoroughly persuaded that I am indebted for the proposal to the most disinterested and affectionate motives; but knowing that the

fervor with which he pursues his objects sometimes affects the estimate he forms of them, and being in no condition to make hazardous experiments, it is advisable for me to have the sanction of other judgments to his opinions. You are well acquainted with the situation and can at once decide whether it presents the material and certain advantages on which Col. Lee calculates. A *general intimation* therefore of the light in which the matter strikes you, will lay me under a very particular obligation. I am by no means sure that in any result it will be in my power to profit by Col. Lee's friendship, but it may be of some consequence whether the opportunity be worth attending to or not.

My information from Richmond is very unpropitious to federal policy. Yours is no doubt more full and more recent. A decided and malignant majority may do many things of a disagreeable nature; but I trust the Constitution is too firmly established to be now materially vulnerable. The elections for the Legislature of Penn^a^ N. Jersey, & Maryland, ensure measures of a contrary complexion in those States. Indeed Virginia is the only instance among the ratifying States in which the Politics of the Legislature are at variance with the sense of the people, expressed by their Representatives in Convention. We hear nothing from Massachu^ts^ or N. Hampshire since the meeting of their General Courts. It is understood that both the appointments & arrangements for the Government will be calculated to support and as far as possible to dignify it. The public conversation

seems to be not yet settled on the Vice President. Mr. Hancock & Mr. Adams have been most talked of. The former *it is said* rejects the idea of any secondary station; and the latter does not unite the suffrages of his own State, and is unpopular in many other places. As other candidates however are not likely to present themselves, and New England will be considered as having strong pretensions, it seems not improbable that the question will lie between the Gentlemen above named. Mr. Jay & Gen[l] Knox have been mentioned; but it is supposed that neither of them will exchange his present situation for an unprofitable dignity.

I shall leave this in a day or two, and am not yet finally determined how far my journey may be continued Southward. A few lines on the subject above mentioned will either find me in Philad[a], or be there taken care of for me. Should anything occur here or elsewhere worth your attention, it shall be duly communicated by, Dear Sir your very respectful and Affectionate Servant.

TO EDMUND RANDOLPH. MAD. MSS.

PHILAD[A], Nov[r] 23, 1788.

MY DEAR FRIEND,

Your two favors of the 5th & 10th instant have been duly rec[d]. The appointments for the Senate communicated in the latter, answer to the calculations I had formed, notwithstanding the contrary appearances on which the former was founded. My only surprise is that in the present temper and dis-

proportionate number of the anti federal part of the Assembly, my name should have been honored with so great a vote as it received.[1] When this circumstance is combined with that of the characters which I have reason to believe concurred in it, I should be justly chargeable with a very mistaken ambition, if I did not consider the event in the light which you anticipated. I shall not be surprised if the attempt should be equally successful to shut the door of the other House agst me, which was the real object of my preference as well for the reason formerly suggested to you, as for the additional one that it will less require a stile of life with which my circumstances do not square, & for which an inadequate provision only will probably be made by the public. Being not yet acquainted with the allottment of Orange in the districts, I can form no estimate of the reception that will be given to an offer of my services. The district in which I am told it is likely to be thrown, for the choice of an Elector, is a very monitory sample of what may & probably will be done in that way.

My present situation embarrasses me somewhat. When I left N. York, I not only expected that the Choice for the Senate would be as it is, but was apprehensive y^{t} the spirit of party might chuse to add the supposed mortification of dropping my name from the deputation to Congress for the fraction of a year remaining. I accordingly left that

[1] For Senator, Madison received 77 votes, Richard Henry Lee 98, and William Grayson, 86.

place under arrangements which did not require my return. At the same time, I had it in view, if left entirely to my option, to pass the Winter or part of it there, being desirous of employing some of the time in matters which need access to the papers of Congress, & supposing moreover that I should be there master more of my time y^{n} in Virginia. The opportunity of executing my plan is given me I find by one of the votes of the Assembly. On the other hand I am now pressed by some of my friends to repair to Virginia, as a requisite expedient for counteracting the machinations agst my election into the H. of Rep^{s} To this again I am extremely disinclined for reasons additional to the one above mentioned. It will have an electioneering appearance which I always despised and wish to shun. And as I should shew myself in Orange only, where there will probably be little difficulty, my presence could have no very favorable effect; whilst it is very possible that such a mark of solicitude strengthened by my not declining a reappointment to Congress, and now declining to serve in it, might by a dexterous misinterpretation, be made to operate on the other side. These considerations are strong inducements to join my colleagues at N. York, and leave things to their own course in Virginia. If Orange should fall into a federal district it is probable I shall not be opposed; if otherwise a successful opposition seems unavoidable. My decision however is not finally taken.

Mr Dawson arrived here this morning. He took

Anapolis in his way, where he tells me the disputed election of Baltimore engages the whole attention at present.

Will you be good eno' to enable me to answer the inclosed paper. I do not chuse to trust my recollection of the law on the subject. The enquiry comes from the French Consul at N. York.

You may continue to address y^r^ letters to N. York till I give you other notice as they will not be lost whatever direction I may take, and will be highly grateful if I should go thither.

Y^rs^ most Affect^y^

TO HENRY LEE. MAD. MSS.

PHILADELPHIA Nov. 30th 1788.

MY DEAR SIR

Your favor of the 29th ult: was received in N. York—the pleasing one of the 19th Inst. found me in this city, whither I had come with a view either to return to N. York or proceed to Virginia as circumstances might determine—I have not sooner acknowledged your first favor, because it intimated that the subject of it admitted of delay, and I did not wish to precipitate a determination on it—although I did not foresee any addition of lights to guide me—The truth is I am fully satisfied that your calculations of advantage in the purchase are in substance at least well founded—I cannot be less so, that the proposition to me is the genuine offspring of a friendship, which demands the warmest returns and acknowledgements—an opportunity of bettering my private

circumstances cannot be prudently disregarded by me—and I need not add that one more acceptable could not be found, than that in which every instance of profit to myself would be a pleasing proof of concurrent profit to you. To these considerations nothing is opposed but an inability to make the contributions which would be due & necessary on my part—and a fixt aversion to becoming a burden in the contract, and to stand in the way perhaps of other friends, who have an equal title to gratification, with the requisite means of giving effect to the plan—I do not know that within 12 months I could command more than one or two hundred pounds, unless I could dispose of property, which is not at present practicable.

You will see from the above explanation that notwithstanding my inclination, I dare not avail myself of your friendship on this occasion—any further than arrangements can be engrafted in the Bargain which will make the bargain contribute itself the means of fulfilling its obligations, and its objects. So far I shall be happy in partaking its benefits in such proportion as you may think fit—not exceeding the reparation in your own behalf—How far the means can be extracted out of the bargain you alone can determine. I apprehend that one at least of the gentlemen on whom you have cast an eye, is in no condition at present to enter into such a speculation. Wadsworth is probably able—but I cannot even guess his dispositions on the subject—of the other I know nothing—The measures pursued at Richmond are as

impolitic as they are otherwise exceptionable—if alterations of a reasonable sort are really in view, they are much more attainable from Congress than from attempts to bring about another convention. It is already decided that the latter mode is a hopeless pursuit—N. H—Mass—Con. N. J. Pen^{a} & Delaware having appointed Senators known to be Bona fide friends to the constitution—From the 1st State will be Langdon & Bartlett—from the 2^{d} Bowdoin & Strong—from N. Jersey, Patterson & Elmer —the others you know—Maryland, S. Carolina & Georgia will make appointments of the like complexions. The elections of Rep^{s} for Pen^{a} is over, but the result is not yet known from all the counties, little doubt is entertained on one side, that it will prove favorable, though the other side do not renounce its hopes. In the city the majority was nearly as five to one—In Lancaster county still greater I am told, and in one or two others, the proportion not less—The antifederal counties however are farthest off, and have not yet been heard from—In Berks where unanimity almost prevailed on that side, the badness of the day and the height of the waters reduced the number of voters to about 400—although the county must contain several more—In general a small proportion of the people seemed to have voted—How far this is to be charged on the weather or an indifference to the occasion I am not able to say.

I am not yet entirely recovered from the complaint which was reproduced by the journey from

N. York hither—Nor am I yet absolutely decided whether I shall go back in consequence of the reappointment to Cong—or proceed forthwith to Virg[a] —I mean to be a member of the H. of Rep[s] if elected to that service—and to take the proper steps for offering my services. Those of a contrary character I shall certainly decline. Even the electioneering appearance of a trip to Virg[a] at this crisis is not a little grating to me. Present me in the best manner to M[rs] Lee. I am yrs. aff[y]

TO THOMAS JEFFERSON. MAD. MSS.

PHILADELPHIA, Dec[r]. 8, 1788.

DEAR SIR,

This will be handed to you by Mr. Gouverneur Morris who will embark in a few days for Havre, from whence he will proceed immediately to Paris. He is already well known to you by character; and as far as there may be a defect of personal acquaintance I beg leave to supply it by this introduction.

My two last were of Oc[r] 8 & 17th. They furnished a state of our affairs as they then stood. I shall here add the particulars of most consequence, which have since taken place; remembering however that many details will be most conveniently gathered from the conversation of Mr. Morris who is thoroughly possessed of American transactions.

Notwithstanding the formidable opposition made to the New federal Government, first in order to prevent its adoption, and since in order to place its administration in the hands of disaffected men, there

is now both a certainty of its peaceable commencement in March next, and a flattering prospect that it will be administered by men who will give it a fair trial. General Washington will certainly be called to the Executive department. Mr. Adams, who is *pledged to support him*, will probably be the vice president. The enemies to the Government, at the head & the most inveterate, of whom, is Mr. Henry are laying a train for the election of Governor Clinton, but it cannot succeed unless the federal votes be more dispersed than can well happen. Of the seven States which have appointed their Senators, Virginia alone will have anti-federal members in that branch. Those of N. Hampshire are President Langdon & Judge Bartlett—of Massachusetts Mr. Strong and Mr. Dalton—of Connecticut Doc^{r} Johnson and Mr. Elseworth—of N. Jersey Mr. Patterson and Mr. Elmer—of Penn^{a} Mr. R. Morris and Mr. McClay—of Delaware Mr. Geo. Reed and Mr. Bassett—of Virgina Mr. R. H. Lee and Col. Grayson. Here is already a majority of the ratifying States on the side of the Constitution. And it is not doubted that it will be reinforced by the appointments of Maryland, S. Carolina and Georgia. As one branch of the Legislature of N. York is attached to the Constitution, it is not improbable that one of the Senators from that State also will be added to the majority. In the House of Representatives the proportion of anti federal members will of course be greater, but cannot if present appearances are to be trusted, amount to a majority, or even a very formidable minority.

The election for this branch has taken place as yet no where except in Penn[a], and here the returns are not yet come in from all the Counties. It is certain however that seven out of the eight, and probable that the whole eight representatives will bear the federal stamp. Even in Virginia where the enemies to the Government form $\frac{2}{3}$ of the *legislature* it is computed that more than half the number of Representatives, who will be elected by the *people*, formed into districts for the purpose, will be of the same stamp. By some, it is computed that 7 out of the 10 allotted to that State will be opposed to the politics of the present Legislature.

The questions which divide the public at present relate 1. to the extent of the amendments that ought to be made to the Constitution. 2. to the mode in which they ought to be made. The friends of the Constitution, some from an approbation of particular amendments, others from a spirit of conciliation, are generally agreed that the System should be revised. But they wish the revisal to be carried no farther than to supply additional guards for liberty, without abridging the sum of power transferred from the States to the general Government or altering previous to trial, the particular structure of the latter and are fixed in opposition to the risk of another Convention whilst the purpose can be as well answered, by the other mode provided for introducing amendments. Those who have opposed the Constitution, are on the other hand, zealous for a second Convention, and for a revisal which may

either not be restrained at all, or extend at least as far as alterations have been proposed by any State. Some of this class, are no doubt, friends to an effective Government, and even to the substance of the particular Government in question. It is equally certain that there are others who urge a second Convention with the insidious hope, of throwing all things into Confusion, and of subverting the fabric just established, if not the Union itself. If the first Congress embrace the policy which circumstances mark out, they will not fail to propose of themselves, every desirable safeguard for popular rights; and by thus separating the well meaning from the designing opponents fix on the latter their true character, and give to the Government its due popularity and stability.

[1] *Moustier*[2] *proves a most unlucky appointment.* He is *unsocial proud* and *niggardly and betrays a sort of fastidiousness towards this country.* . . . At *Boston he im*prudently *suffered etiquette to prevent* even *an interview with governor Handcock.* The *inhabitants, taking part with the governor,* neither *visited nor invited the count.* They were then less apprehensive of a misinter*pretation of the neglect as the most cordial intercourse had just preceeded between the town* and *the French squadron.* Both the *count and the Marchioness are particularly unpopular among their countrymen here.* Such of them as are not under

[1] See letters May 23 & 27 1789 for a more favorable view of him & Mad: Brehan.—Madison's note.

[2] Italics for cypher.

restraint make very free remarks and are *anxious for a new diplomatic arrangement.* It is but right to add to these *particulars, that there is reason to believe* that unlucky *impressions were made on the count at his first* probably *by de la Forest the consul a cunning disciple I* take it *of marbois' politics* and by something in *his communication with Jay* which *he considered as the effect of coldness* and *sourness toward France.*

I am a stranger to the *errand on which G. morris goes to Europe.* It *relates I presume to the affairs of R. Morris,* which *are still much deranged.*

I have received and paid the draught in favor of Doc^r^ Ramsay. I had before paid the order in favor of Mr. Thompson, immediately on the receipt of your letter. About 220 dollars of the balance due on the last state of our account were left in Virginia for the use of your Nephews. There are a few lesser sums which stand on my side of the account which I shall take credit for, when you can find leisure to forward another statement of your friendly advances for me.

I shall leave this place in a day or two for Virg^a^, where my friends who wish me to co-operate in putting our political machine into activity as a member of the House of Representatives, press me to attend. They made me a candidate for the Senate, for which I had not allotted my pretensions. The attempt was defeated by Mr. Henry, who is omnipotent in the present Legislature and who added to the expedients common on such occasions a public philippic ag^st^ my federal principles. He has taken equal pains in forming the Counties into districts for the election of

Rep.s to associate with Orange such as are most devoted to his politics, and most likely to be swayed by the prejudices excited ag.st me.[1] From the best information I have of the prevailing temper of the District, I conclude that my going to Virg.a will answer no other purpose than to satisfy the Opinions and entreaties of my friends. The trip is in itself very disagreeable both on account of its electioneering appearance, and the sacrifice of the winter for which I had assigned a task which the intermission of Congressional business would have made convenient at New York.

With the sincerest affection & the highest esteem I am Dear Sir,

Yours.

The letter herewith inclosed for Mr Gordon is from Mr Cyrus Griffin. The other from Mr. Mccarty an American Citizen settled in France, but at present here on business. He appears to be a very worthy man & I have promised to recommend his letter to your care, as a certain channel of conveyance

TO PHILIP MAZZEI.[2]

PHILADELPHIA, 10 December, 1788.

Your book, as I prophesied, sells nowhere but in Virginia. A very few copies only have been called for either in New York or in this city. The language

[1] In districting the State Orange County was included in seven other counties six of which were thought to be opposed to Madison. This is supposed to have been the earliest instance of "Gerrymandering." Monroe was selected to oppose Madison, who was nevertheless elected by a considerable majority, Feb. 2, 1789.

[2] From *Madison's Works*. The letter is not found in the Mad. MSS.

in which it is written will account for it. In order to attract notice, I translated the panegyric in the French Mercure, and had it made part of the advertisement. I did not translate the comment on the Federal Constitution, as you wished, because I could not spare the time, as well as because I did not approve the tendency of it. Some of your remarks prove that Horace's "*Cœlum non animum mutant qui trans mare currunt*" does not hold without exception. In Europe, the abuses of power continually before your eyes have given a bias to your political reflections which you did not feel in equal degree when you left America, and which you would feel less of if you had remained in America. Philosophers on the old continent, in their zeal against tyranny, would rush into anarchy; as the horrors of superstition drive them into Atheism. Here, perhaps, the inconveniences of relaxed government have reconciled too many to the opposite extreme. If your plan of a single Legislature, as in Pennsylvania, &c., were adopted, I sincerely believe that it would prove the most deadly blow ever given to Republicanism. Were I an enemy to that form, I would preach the very doctrines which are preached by the enemies to the government proposed for the United States. Many of our best citizens are disgusted with the injustice, instability, and folly, which characterize the American Administrations. The number has for some time been rapidly increasing. Were the evils to be much longer protracted, the disgust would seize citizens of every description.

It is of infinite importance to the cause of liberty to ascertain the degree of it which will consist with the purposes of society. An error on one side may be as fatal as on the other. Hitherto, the error in the United States has lain in the excess.

All the States except North Carolina and Rhode Island have ratified the proposed Constitution. Seven of them have appointed their Senators, of whom those of Virginia, R. H. Lee and Col. Grayson, alone are among the opponents of the system. The appointments of Maryland, South Carolina, and Georgia will pretty certainly be of the same stamp with the majority. The House of Representatives is yet to be chosen everywhere except in Pennsylvania. From the partial returns received, the election will wear a federal aspect, unless the event in one or two particular counties should contradict every calculation. If the eight members from this State be on the side of the Constitution, it will in a manner secure the majority in that branch of the Congress also. The object of the Anti-Federalists is to bring about another general Convention, which would either agree on nothing, as would be agreeable to some, and throw everything into confusion, or expunge from the Constitution parts which are held by its friends to be essential to it. The latter party are willing to gratify their opponents with every supplemental provision for general rights, but insist that this can be better done in the mode provided for amendments.

I remain, with great sincerity, your friend and servant.

TO JAMES MADISON. MAD. MSS.

ALEXANDRIA Decr 18th 1788

I arrived here this morning on my way home. I did not write you my intentions sooner because they are rather of recent date, and I wished to be able at the same time to let you know the day on which I should get to Fredg. This I have not till now been able to fix. I now find that I shall get there on Friday week, and shall accordingly then stand in need of your assistance for the completion of my Journey. It will be necessary for me to have the use of the chair, as well on account of my baggage which consists of a Portmanteau Trunk and a Portmanteau, as on acc^{t} of some remains of the piles which for some weeks past have been very troublesome. Whoever brings the chair must bring a saddle proper for the portmanteau. No horse need be brought for a servant, John having been left in N. York given over as incurable, and another having been engaged. I wish the chair to be in Town certainly on that day, and shall request the favor of Mr Ramsy to send this by a hired messenger, if no other conveyance can be secured.—I shall remain in this neighbourhood till thursday next when I shall fall into the stage at Colchester & proceed on Friday from Dumfries for Fredg.—I could reach Fredg. on no day so well as on that above mentioned. An earlier day would be too soon for the carriage to meet me; and a later one would leave me on the road on Sunday, or oblige me to postpone my resuming my journey till the tuesday following.

I have nothing to add on the subject of news, but what may be better communicated verbally on my arrival. In the mean time with my affect^n^ regards to all the family I conclude your dutiful son.

TO GEORGE WASHINGTON. WASH. MSS.

ORANGE, Jany 14th, 1789..

DEAR SIR,

Your favor of the 2d instant, with the letters attending it never came to hand 'till last evening. I have good reason to believe that the delay happened between Alexand^a^ & Fred^g^, rather than at or from the latter place. Mr. F. Maury pays particular attention to all letters which arrive there for me, and forwards them to Orange by opportunities which are frequent & safe. I apprehend there will be no impropriety in committing a confidential letter to that channel. As an additional precaution, I will desire him to be particularly attentive to any letter which may have your name on it.

I have heard from two only of the returns from the Electoral districts; [1] the one in favor of Mr. Gilchrist

[1] Stephens	Cabel	
109	71	Albemarle.
	270	Amherst.
15	66	Fluvanna.
268	10	Spotsylv^a^.
113	4	Orange.
177	26	Culpeper.
4	157	Buckingham.
686	604	
	82	bal. in favor of Stevens.

The unanimity in Amherst was produced by a previous declaration,

—the other of General Stephens. He succeeded ag^st^ Col. Cabel by a majority of 82 votes. He owes his success to the coalition between the two parties in Spotsylv^a^. My situation is unfavorable for intelligence from the State at large, and therefore I can say little of the prospects as to the Feby election.

I fear, from the vague accounts which circulate, that the federal candidates are likely to stand in the way of one another. This is not the case however in my district. The field is left entirely to Monroe & myself. The event of our competition will probably depend on the part to be taken by two or three descriptions of people, whose decision is not known, if not yet to be ultimately formed. I have pursued my pretensions much further than I had premeditated; having not only made great use of epistolary means, but actually visited two Counties, Culpeper & Louisa, and publicly contradicted the erroneous reports propagated ag^st^ me. It has been very industriously inculcated that I am dogmatically attached to the Constitution in every clause, syllable & letter, and therefore not a single amendment will be promoted by my vote, either from conviction or a spirit of accommodation.[1] This is the report most likely

as I am told, of Col. Cabel on the subject of the Presid^t^, which satisfied the federal party. Little attention seems to have been paid anywhere to the vice president. Among the bulk of the people, the choice of the President has been regarded as the sole subject of the election.—Madison's note.

[1] TO GEORGE EVE.

January 2d, 1789.

SIR,

Being informed that reports prevail not only that I am opposed to any amendments whatever to the new federal Constitution, but that

to affect the election, and most difficult to be combated with success within the limited period. There are a number of others however which are auxiliaries

I have ceased to be a friend to the rights of Conscience; and inferring from a conversation with my brother William, that you are disposed to contradict such reports as far as your knowledge of my sentiments may justify, I am led to trouble you with this communication of them. As a private Citizen it could not be my wish that erroneous opinions should be entertained, with respect to either of those points, particularly with respect to religious liberty. But having been induced, to offer my services to this district as its representative in the federal Legislature, considerations of a public nature make it proper that, with respect to both, my principles and views should be rightly understood.

I freely own that I have never seen in the Constitution as it now stands those serious dangers which have alarmed many respectable Citizens. Accordingly whilst it remained unratified, and it was necessary to unite the States in some one plan, I opposed all previous alterations as calculated to throw the States into dangerous contentions, and to furnish the secret enemies of the Union with an opportunity of promoting its dissolution. Circumstances are now changed. The Constitution is established on the ratifications of eleven States and a very great majority of the people of America; and amendments, if pursued with a proper moderation and in a proper mode, will be not only safe, but may serve the double purpose of satisfying the minds of well meaning opponents, and of providing additional guards in favour of liberty. Under this change of circumstances, it is my sincere opinion that the Constitution ought to be revised, and that the first Congress meeting under it ought to prepare and recommend to the States for ratification, the most satisfactory provisions for all essential rights, particularly the rights of Conscience in the fullest latitude, the freedom of the press, trials by jury, security against general warrants &c. I think it will be proper also to provide expressly in the Constitution, for the periodical increase of the number of Representatives until the amount shall be entirely satisfactory, and to put the judiciary department into such a form as will render vexatious appeals impossible. There are sundry other alterations which are either eligible in themselves, or being at least safe, are recommended by the respect due to such as wish for them.

I have intimated that the amendments ought to be proposed by the first Congress. I prefer this mode to that of a General Convention—

to it.—With my respectful compliments to Mrs. Washington, & the others of your family,

I remain, Dear Sir, your most obed^{t} & affect^{e} Servt.

TO HENRY LEE. MAD. MSS.

COPY OF REMARKS ON SITUATION OF GREAT FALLS OF POTOWMACK [SENT TO COL. H. LEE AT WHOSE REQUEST DRAWN UP][1] JANY 1789

The importance of the spott at the Great Falls of the Potowmack and the value of the property including it appear from the following considerations—

First: The singular fitness of the situation for every species of water works, merchants mills, Forges, Slitting & Plating [sic] mills, Sawmills &c, &c, may be erected here with greater advantages from nature than at any place perhaps within the

1st. because it is the most expeditious mode. A Convention must be delayed until ⅔ of the State Legislatures shall have applied for one, and afterwards the amendments must be submitted to the States; whereas if the business be undertaken by Congress the amendments may be prepared and submitted in March next. 2dly. because it is the most certain mode. There are not a few States who will absolutely reject the proposal of a Convention, and yet not be averse to amendments in the other mode.—lastly, it is the safest mode. The Congress who will be appointed to execute as well as to amend the Government, will probably be careful not to destroy or endanger it. A Convention, on the other hand, meeting in the present ferment of parties, and containing perhaps insidious characters from different parts of America, would at least spread a general alarm, and be but too likely to turn everything into confusion and uncertainty. It is to be observed however that the question concerning a General Convention, will not belong to the federal Legislature. If ⅔ of the States apply for one, Congress cannot refuse to call it; if not, the other mode of amendments must be pursued.—*Mad. MSS.*

[1] So endorsed by Madison, the words "at whose request drawn up" being in his penmanship when an old man. The report is a copy, as are all the Lee letters.

whole compass of the United States. The spot was long ago marked out by a very sagacious undertaker, for these purposes, and has been left unimproved from no other cause than the want of Funds. The addition made to the natural advantages of the place, by the opening of the navigation above requires no explanation. Wheat, Timber &c can by that means be collected from an extent of Country which is capable of supplying them in the most ample quantities that can be desired. Iron ore also & mineral coal are distributed along the main River & its branches in great abundance, and can be brought to the works on the best terms.

Secondly the importance of the situation as a resting place for an extensive commerce.—That the commerce through this Channel will be extensive, will be best shewn, if all proof be not superfluous, by a few plain & known facts. The main river is already navigable miles above the falls. A Boat of tons burden came down last fall from with a load of and the navigation of that part of the river will be ready for general use as soon as the spring season comes on, or at farthest before the ensuing Summer is over. The Shanandoah branch may and probably will be, very soon, made navigable for 150 miles from its mouth which is miles above the Falls. The south branch is equally capable of the same improvement for 100 miles from its mouth which is miles above the falls. There are a number of smaller streams running into the Potowmac above the falls, which are either already navigable, or may easily be made so, not only on the Virginia but also on the Maryland sides. By means of the latter no small part of the produce now transported by land to Baltimore, from the upper parts of Maryland & the skirts of Penn^{a} will be drawn into the navigation of the Potowmack. The great region of country embrac'd by these several waters is in general extremely fertile, particularly in the parts through which they immediately flow, is already settled and cultivated, and is found excellently adapted to almost every article which has been raised within this State. But

the commerce of the Potomack will not be limited to this region, extensive as it is. Another prospect presents itself on the western side of the Alleghany mountains. The communication between the Atlantic and the western country, can be more easily established through the Potomac than through any other channel, the source of this river lies nearest to the sources of those which run westerly; its course forms the most direct line with the course of the latter; and having such of its natural obstructions as require locks all at one spot, it has commanded advantages over other channels for attracting the produce & supplying the consumption of great part of the fertile country on the Ohio and its upper branches, if not on the lakes also and the streams running into them.— That the scite in question will be one of the resting places for this extensive commerce results from several circumstances. 1. Wheat the staple article to be exported through this channel, will be here most conveniently turned into flour for the purpose. It will therefore be here purchased by the merchants or rather agents of the merchants, residing at the Seaport Towns; who will of course, keep at the same place mechandize, in order the more easily to pay for the produce, one side of commerce necessarily attracts the other. The place of buying will always become the place of selling also. There may be other articles, which will undergo some manufacturing process before exportation, and to which the same remark may be applied, But the arrangements established for a principal article will extend themselves to others which would otherwise require or produce them. 2. The navigation above being open two weeks earlier than below the falls, and the Town of Alexandria to which a good road may be made being not more than 17 miles distant there will be a farther inducement to make the falls a place of Exchange for exports and imports. 3. The navigation above being already fitted for use, & that below being not likely to be open for some time, and on account of its peculiar difficulties, perhaps a long time, the Falls will if proper measures be accelerated, have

the habit of commerce in its favour & might be continued as the entrepôt from causes not otherwise entirely equal to the effect.

Thirdly. The convenience of the place for a manufacturing Town This advantage is evident from the remarks already made. In no place can materials or provisions be more cheaply or plentifully assembled. Every branch of manufacture with Iron or other water works, must be particularly favoured at this spot, and as such are numerous and have mutual relations again with many other branches, a better seat for manufactories can scarcely be fancied. The place is moreover healthy, is surrounded by a fertile and well wooded country, and admits of an easy supply of every foreign implement & article which manufactures may stand in need of.

TO JAMES MADISON. MAD. MSS.

MOUNT VERNON Febʳʸ 24, 89 [1]

HONᵈ SIR

The obstructions to my journey from the Snow, the River at Fredericksberg, and the unparallelled badness of the roads, prevented my arrival here sooner than the evening before last. Harry will be able to give the particulars of the Journey. I detained him yesterday in order to give both him & the horses a little rest after their fatigue; and shall leave it in some measure to himself, to return either by way of Fredᵍ or Norman's Ford, according to the state of the weather & the information he may receive concerning the latter route.—I am not yet decided as to the day on which I shall go forward from

[1] February 16, 1789, Mt. Vernon, Washington wrote to Madison, congratulating him on his election to Congress, and saying he expected him at Mt. Vernon on his way to New York.

this place. Being now convinced from the state of the weather & the rivers that I could not possibly reach New York by the day fixed for the meeting of Cong[s] and if I could that there will not be a sufficient number of members for business, I shall think myself more at liberty to consult my own conveniency. By waiting a few days I promise myself also the company of some of my colleagues, particularly M[r] Page who will I think be sure to call on the General. M[r] R. B. Lee is the only member who has yet set out, according to my information. He has gone on to Alexand[r] but will wait I presume for company, at least untill the weather shall invite him to proceed.

I meet here with no news worth communicating. The inclosed papers, I rec[d] at Fredericksb[g] and may be read as a continuation of the intelligence from New York.

I find myself perfectly well after my ride, & hoping that this will find my mother in better health, and the rest of the family still well, I remain Y[r] affc[t] Son.

TO EDMUND RANDOLPH MAD. MSS.

ALEXANDRIA, March 1st, 1789.

MY DEAR FRIEND,

This is the first convenient opportunity I have had for dropping you a line since I last came into the State. Your sanction to my remaining in N. York during the crisis of the elections, conveyed through Col. Carrington, never came to hand till I had arrived in Orange. It coincided so fully with my

inclination, and indeed with my judgment, that had it been received in due time, I do not know but I should have disregarded all the pressing exhortations which stood opposed to your opinion. I am persuaded however that my appearance in the district was more necessary to my election than you then calculated. In truth it has been evinced by the experiment, that my absence would have left a room for the calumnies of antifederal partizans which would have defeated much better pretensions than mine. In Culpeper which was the critical County, a continued attention was necessary to repel the multiplied fasehoods which circulated. Whether I ought to be satisfied or displeased with my success, I shall hereafter be more able to judge. My present anticipations are not flattering. I see on the lists of Representatives a very scanty proportion who will share in the drudgery of business. And I foresee contentions first between federal and antifederal parties, and then between Northern & Southern Parties, which give additional disagreeableness to the prospect. Should the State Elections give an antifederal colour to the Legislatures, which from causes not antifederal in the people, may well happen, difficulties will again start up in this quarter, which may have a still more serious aspect on the Congressional proceedings.

In my last or one of my last letters was inclosed a Quere from Mr. St. John the French Consul at New York, relating to the law here which regulates the recording of deeds &c. As I shall on my return be

applied to for an answer, I will thank you for the proper one as soon as your leisure will allow.

I shall go on from this tomorrow. On my arrival I shall attend as far as I can to whatever may deserve your perusal. Besides the private satisfaction which I shall have in the continuance of our correspondence, I promise myself the benefit of your suggestions on public subjects.

Present me respectfully to Mrs. R. and rely on the Affection with which I remain, Y^{rs} truly.

As your neighborhood gives you frequent interviews with the Presid^{t} of W^{m} & Mary, remind him of my best regards for him.

TO GEORGE WASHINGTON. WASH. MSS.

BALTIMORE, March 5th, 1789

DEAR SIR,

On our Journey hither we have fallen in with the Bearer of the Electoral Votes of Georgia. They are unanimous as to the President and are all thrown away on Individuals of the State as to the Vice President. The Representatives were not chosen when the Gentleman set out, but the election was to take place in a day or two after. General Matthews, he tells us will be one, Mr. Baldwin another, & the third either Mr. Osborne or Genl Jackson. All the Candidates I understand are well affected to the Constitution. In South Carolina the Votes for Presid^{t} were also unanimous, as the Gentleman in-

forms us. Of the others 5 were given to Mr. Rutledge, and the remaining two not to Mr. Adams.

The badness of the Roads & the weather prevented our getting to this place sooner than last Evening, by which means we lose two days. R. H. Lee left this on his way to New York on Monday morning. Mr. White had preceded him a day or two.

With the highest respect & mo. affect. attach^{t},
I am Dr Sir,

Y^{rs}.

TO GEORGE WASHINGTON. WASH. MSS.

PHILAD^{A}, March 8th, 1789

DEAR SIR,

We arrived here yesterday evening where we have met with Mr. Dawson just from New York. When he left it, 18 representatives and 8 senators had assembled. It is not certain when the deficiencies will be made up. The most favorable conjectures postpone it to Monday se'nnight. The members attending are chiefly from the Eastward. I do not learn that a single member, except Mr. White is from a State South of Pennsylv^{a}; unless, indeed, Dr Tucker is to be included in the exception. The N. Jersey Rep^{s} are not yet announced. Mr. Clarke it is supposed will be one, Mr. Cadwallader, Mr. Boudinot, and Mr. Skureman, are talked of as the others.

I find that the communication made you from Kentucky corresponds with an official letter to Cong^{s} from Govr St. Clair, which speaks of the same emissary, and the same errand. Notice has been trans-

mitted of the affair to the Executive of Virg[a], in order that regular steps may be taken, if sufficient ground be afforded, for apprehending the incendiary. The project of G. M.[1] for establishing a Colony beyond the Mississippi is also going on. It is the opinion of Mr. Brown, as explained to Mr. Griffin, that emigrations to the Spanish territory will be enticed from Kentucky, as rapidly, as the allurements of the latter place have obtained them from the Atlantic States. All these circumstances point out the conduct which the New Gov[t] ought to pursue with regard to the Western Country & Spain.

I dropped you a few lines from Baltimore mentioning the unanimity of the Electoral Votes of S. Carol[a] & Georgia for a Presid, & the manner in which the Secondary votes were disposed of.

I am D[r] Sir Y[r] truly Affect[e].

TO GEORGE WASHINGTON. WASH. MSS.

N. York, March 19, 1789.

Dear Sir,

On our arrival here we found that the number of Representatives on the spot had been stationary from the second day of the meeting. Mr. Page, Mr. Lee, & myself raised it to 21, and Mr. S. Griffin and Mr. Moore have been since added. The number of attending Senators continues at 8. When a Quorum will be made up in either House rests on vague conjecture, rather than on any precise information. It is

[1] George Morgan.

not improbable I think that the present week will supply the deficiency in one, if not in both of them. The States most convenient, are among the defaulters. It will not be known, I am told, in this State, who the Representatives are, till some time next month. The federal party calculate on an equal division of the six. Mr. Lawrence for the City district, Mr. Floyd for the Long Island district, and Mr. Benson for a third. In New Jersey the election has been conducted in a very singular manner. The law having fixed no time expressly for closing the polls, they have been kept open three or four weeks in some of the Counties, by a rival jealousy between the Eastern & Western divisions of the State, and it seems uncertain when they would have been closed if the Governor had not interposed by fixing on a day for receiving the returns, and proclaiming the successful candidates. The day is passed, but I have not heard the result. The Western ticket in favor of Skureman, Boudinot, Cadwallader, & Sennickson if this be the name, is supposed to have prevailed; but an impeachment of the election by the unsuccessful competitors has been talked of. Two of the Representatives from Massachusetts, are also unknown to us. In one of the districts, it is supposed that a disaffected man has prevailed.

An English Packet has been long expected, and is not yet arrived. The state of foreign news remains of consequence little altered. The accounts of latest date through other channels shew that the progress in France towards a Constitutional establishment, is

unchecked, and that a coalition between the King and the Commons agst the Nobility & Clergy, will direct the innovations.

With respectful Compliments to Mrs. Washington & the rest of the family, I am Dear Sir truly & affect^{y} Y^{r} Obed^{t} Servt.

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, Mar. 26, 1789.

DEAR SIR,

The inclosed copy of Morgan's invitation [1] to his fellow Citizens was obtained from one of his friends,

[1] (Put into the hands of confidential people in Penn^{a} & N. Jersey for the purpose of procuring followers.)

Several Gentlemen who propose to make settlements in the Western Country mean to reconnoitre & survey the same the ensuing winter. All farmers, Tradesmen &c of good characters, who wish to unite in this scheme & to visit the Country under my direction, shall be provided with boats & provisions for the purpose, free of expence, on signing an agreement which may be seen by applying to me at Prospect near Princeton on or before the 8th day of Oc^{r} next, or at Fort pitt by the 10th day of Novr next. The boats which will be employed on this expedition are proposed to be from 40 to 60 feet long, to row with 20 oars each, & to carry a number of Swivels. Each man to provide himself with a good firelock or rifle, ammunition & one blanket or more if he pleases. Such as choose tents or other conveniences must provide them themselves. Every person who accompanies me on this undertaking shall be entitled to 320 Acres of land, at $\frac{1}{3}$ of a dollar per acre. Those who first engage to have the preference of surveys, w^{ch}, however each person may make on such part of the whole tract as he pleases, taking none but his choice of the best lands; provided each survey is either square or oblong whose sides are East, West, North & South; 640 Acres or more being first reserved for a Town which I propose to divide into lots of one acre each & give 600 of them in fee to such Merchants, tradesmen &c, as may apply on the spot, & 40 of them to such public uses as the Inhabitants shall

and forwarded to me from Pennsylvania. It is the most authentic & precise evidence of the Spanish project that has come to my knowledge. The in-

from time to time recommend; together with one out lot of ten acres to each of the first 600 families who shall build & settle in the Town. All persons who settle with me at New Madrid, & their posterity will have the free navigation of the Mississippi & a Market at New Orleans free from duties for all the produce from their lands, where they may receive payment in Mexican Dollars for their flour, tobacco &c.

It is proposed after fixing on the spot to clear & fence in 100 acres in a convenient situation, to plant it with Corn, to hire suitable hands to tend it thro' the summer, & in the next fall winter & spring, to distribute it to New Settlers at ½ of a dollar per Bushel, that they may have a dependence so far as this will go. And as Buffaloes & other Game are very plenty in the Neighborhood, there can be no want of provision, contractors being ready to engage to deliver fresh beef & venison throughout the year at 1 Penny Per ℔. Credit will be given to those who desire it, as well for the land as for the provisions, & payment rec[d] in future Produce. All persons will be assisted in building a house, clearing a spot of ground, & in getting in their first crops. Horned Cattle, horses & swine will be delivered to the settlers at New Madrid in such quantities as they shall stand in need of at first at very reasonable rates for cash or future produce. Those who settle at New Madrid in this or the ensuing year shall have Plough Irons, or other Iron works, & farming utensils transported down the ohio gratis; also their cloathing, bedding, Kitchen furniture & certain other articles which may not be too bulky.

School Masters will be engaged immediately for the instruction of Youth. Ministers of the Gospel will meet with encouragement & grants of land made in fee to each of every denomination who may agree with a Congregation before the year 1790, besides particular grants of tracts of land to each Society.

This new City is proposed to be built on a high bank of the Mississippi River, near the mouth of the Ohio, in the richest & most healthy part of the Western Country, about the latitude of 37°.

Those who wish for further information will be pleased to apply to me in person as above mentioned, or at the New City of Madrid after the first day of next December, where the Surveyors will attend to lay out the lands.

(Copy) (Signed,)

GEORGE MORGAN.

October 3d, 1788. —*Mad. MSS.*

strument referred to as retained in Morgan's hands in order to be signed by the adventurers, would still further explain the transaction.

No Quorum is yet formed in either House. The Senate want two members; the House of Repˢ four. It is probable that the members from N. Jersey, who are at length proclaimed, two remaining members from Pennᵃ, and Col. Coles, who halted in Philadᵃ, will come in this evening and supply the deficiency in one branch. The Senate have no precise prospect of the small addition required to their numbers.

With unfeigned attachment, I am Dear Sir, respectfully

Your Obedᵗ hble Servᵗ,

TO THOMAS JEFFERSON.[1]

NEW YORK, March 29th, 1789.

DEAR SIR,—My last was committed in December to Mr. Gouverneur Morris. I was then on my way to Virginia. The elections for the new government commenced shortly after my arrival. The first was of Electors, to Ballot for a President and Vice President. The successful candidates were General Wood, Mr. Zachʸ Johnson, Genˡ Edward Stephens, Doctor David Stuart, Mr. W. Fitzhugh of Chatham, Mr. Warner Lewis of Gloucester, Mr. Jno. Harvey, Mr. Walk, of or near Norfolk, Mr. Kello of Southampton. These nine were federalists. The remaining three, Mr. Patrick Henry, Mr. Roane of King

[1] From *Madison's Works.*

and Queen, and Mr. Pride of Amelia, were of the adverse party. Two of the former party did not attend. The votes were unanimous with respect to General Washington, as appears to have been the case in each of the States. The secondary votes were given, among the federal members, chiefly to Mr. J. Adams, one or two being thrown away in order to prevent a possible competition for the Presidency. Governor Clinton was the secondary choice of the anti-federal members. In the succeeding election of Representatives, federalism was also proved to be the prevailing sentiment of the people. The successful candidates on this list are Mr. Moore, late of the Executive Council (from Rockingham,) Mr. Alexander White, Mr. Richard Bland Lee, Mr. John Page, (Rosewell,) Mr. Samuel Griffin, Mr. Brown, member of the old Congress, (from Kentucky,) J. Madison, Col. Parker, (late nav. officer at Norfolk,) Col. Isaac Coles, (of Halifax,) and Col. Bland. Of these, the seven first have been on the side of the Constitution; the three last in the opposition. Col. Parker appears to be very temperate, and it is not probable that both the others will be very inveterate. It was my misfortune to be thrown into a contest with our friend, Col. Monroe. The occasion produced considerable efforts among our respective friends. Between ourselves, I have no reason to doubt that the distinction was duly kept in mind between political and personal views, and that it has saved our friendship from the smallest diminution. On one side I am sure it is the case.

Notwithstanding the lapse of time since the birth-day of the new Government, (the 4th of March,) I am under the necessity of informing you that a quorum is not yet formed, either in the Senate or House of Representatives. The season of the year, the peculiar badness of the weather, and the short interval between the epoch of election and that of meeting, form a better apology for the delay than will probably occur on your side of the Atlantic. The deficiency at present in the House of Representatives requires two members only for a Quorum, and in the Senate one only. A few days will, therefore, fit the Body for the first step, to wit, opening the Ballots for the President and Vice President. I have already said that General Washington will be the first by a unanimous suffrage. It is held to be certain that Mr. Adams, though refused a great many votes from different motives, will have the second appointment. A considerable delay will be unavoidable, after the ballots are counted, before the President can be on the spot, and, consequently, before any Legislative act can take place. Such a protraction of the inactivity of the Government is to be regretted on many accounts, but most on account of the loss of revenue. A prospect of the Spring importations led to the appointment of the first meeting at a time which, in other respects, was unseasonable.

It is not yet possible to ascertain precisely the complexion of the new Congress. A little time will be necessary to unveil it, and a little will probably

suffice. With regard to the Constitution, it is pretty well decided that the disaffected party in the Senate amounts to two or three members only; and that in the other House it does not exceed a very small minority, some of which will also be restrained by the federalism of the States from which they come. Notwithstanding this character of the Body, I hope and expect that some conciliatory sacrifices will be made, in order to extinguish opposition to the system, or at least break the force of it, by detaching the deluded opponents from their designing leaders. With regard to the system of policy to which the Government is capable of rising, and by which its genius will be appreciated, I wait for some experimental instruction. Were I to advance a conjecture, it would be, that the predictions of an anti-democratic operation will be confronted with at least a sufficient number of the features which have marked the State Governments.

Since my arrival here I have received your favor of November 18th. It had been sent on to Virginia; but not reaching Fredericksburg before I passed that place, it followed me back hither. I am much concerned that your scheme of passing the ensuing summer in your native country has been defeated. Mr. Jay, with whom I have conversed on the subject, tells me that his answer to your public letter has explained the impossibility of giving effect to your wishes, no Congress having been formed under the old Confederation since the receipt of your letter, or, indeed, since the expiration of the last federal year.

The most that can now be done will be to obtain from the new authority, as early as possible, some act which may leave the matter to your own discretion. Perhaps it may be neither more inconvenient to your private nor to the public affairs to make your visit in the fall instead of the Spring, and to pass the Winter instead of the Summer in America. The same cause on which you are to charge your disappointment in this instance prevented a decision on the question of outfit, stated in one of your former communications.

With some printed papers containing interesting articles, I inclose a manuscript copy of Col. Morgan's invitation to persons disposed to seek their fortunes on the Spanish side of the Mississippi. There is no doubt that the project has the sanction of Gardoqui. It is a silly one on the part of Spain, and will probably end like the settlements on the Roman side of the Danube, with the concurrence of the declining empire. But it clearly betrays the plan suggested to you in a former letter, of making the Mississippi the bait for a defection of the Western people. Some of the leaders in Kentucky are known to favor the idea of connection with Spain. The people are as yet inimical to it. Their future disposition will depend on the measures of the new Government.

I omitted to mention that a dispute between the Senate of this State, which was federal, and the other branch, which was otherwise, concerning the manner of appointing Senators for the Congress, was so inflexibly persisted in that no appointment was

made during the late session, and must be delayed for a considerable time longer, even if the dispute should on a second trial be accommodated. It is supposed by some that the superintending power of Congress will be rendered necessary by the temper of the parties. The provision for the choice of electors was also delayed until the opportunity was lost; and that for the election of Representatives so long delayed that the result will not be decided till tuesday next. It is supposed that at least three out of the six will be of the federal party. In New Jersey, the inaccuracy of the law providing for the choice of Representatives has produced an almost equal delay, and left room for contests, which, if brought by the disappointed candidates into the House, will add a disagreeable article to the list of its business.

I am much obliged for the two estimates on the subject of our foreign debt, and shall turn your ideas to the account which they deserve.

TO GEORGE WASHINGTON. WASH. MSS.

NEW YORK, ~~April~~ March 6th, 1789.

DEAR SIR,

The arrival of R. H. Lee yesterday has made up a Quorum of the Senate. A Quorum in the other House was made on wednesday last. The ballots will be opened to-day, unless an indisposition of Mr. Basset should prevent, which was not probable yesterday afternoon. The notifications of the President & Vice President will be left to the Senate. Mr. Charles Thomson will be the messenger to the former.

The papers will have made known that Mr. Mulenburg was the choice of the Representatives for their Speaker, & Mr. Beckley for their Clerk. The competitor of the former was Mr. Trumbul who had a respectable vote; of the latter Mr. S. Stockton, of new Jersey, who, on the first ballot, had the same number with Mr. Beckley.

A British Packet arrived some days ago, but has not brought as far as I have learned, any public letters. The other information brought has passed into our Gazettes, and will have reached you thro' that channel.

I am Dear Sir with the highest respect & attachment Your Obed^{t} & very h^{ble} Servt.

Your favor, inclosing a letter rec^{d} at Mount Vernon for me has been duly received.

SPEECHES IN THE FIRST CONGRESS—FIRST SESSION.[1]

APRIL 9. DUTIES ON IMPORTS.

From what has been suggested by the gentlemen that have spoken on the subject before us, I am led to apprehend we shall be under the necessity of travelling further into an investigation of principles than what I supposed would be necessary, or had in contemplation when I offered the propositions before you.

It was my view to restrain the first essay on this subject principally to the object of revenue, and make this rather a temporary expedient than any thing permanent.[2] I see,

[1] From the *Annals of Congress*, 1st Cong., vol. i.

[2] April 8 Madison introduced the following:

"*Resolved*, As the opinion of this committee, that the following

however, that there are strong exceptions against deciding immediately on a part of the plan, which I had the honor to bring forward, as well as against an application to the resources mentioned in the list of articles just proposed by the gentleman from Pennsylvania. (Mr. HARTLEY.)

I presume, that, however much we may be disposed to promote domestic manufactures, we ought to pay some regard to the present policy of obtaining revenue. It may be remarked also, that by fixing on a temporary expedient for this purpose, we may gain more than we shall lose by suspending the consideration of the other subject until we obtain fuller information of the state of our manufactures. We have at this time the strongest motives for turning our attention to the point I have mentioned; every gentleman sees that the prospect of our harvest from the Spring importations is daily vanishing; and if the committee delay levying and collecting an impost until a system of protecting duties

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duties ought to be levied on goods, wares, and merchandise, imported into the United States, viz:

"On rum, per gallon, —— of a dollar; on all other spirituous liquors, ——; on molasses, ——; on Madeira wine, ——; on all other wines, ——; on common bohea teas per lb., ——; on all other teas, ——; on pepper, ——; on brown sugars, ——; on loaf sugars, ——; on all other sugars, ——; on cocoa and coffee, ——; on all other articles, —— per cent, on their value at the time and place of importation.

"That there ought, moreover, to be levied on all vessels in which goods, wares, or merchandises shall be imported, the duties following, viz: On all vessels built within the United States, and belonging wholly to citizens thereof, at the rate of —— per ton.

"On all vessels belonging wholly to the subjects of Powers with whom the United States have formed treaties, or partly to the subjects of such Powers, and partly to citizens of the said States, at the rate of ——.

"On all vessels belonging wholly or in part to the subjects of other Powers, at the rate of ——."

His design was to put into effect immediately the system which had been approved generally by the States in 1783. See *ante*, vol. i., p. 397 *et seq.*

shall be perfected, there will be no importations of any consequence on which the law is to operate, because, by that time, all the Spring vessels will have arrived. Therefore, from a pursuit of this policy, we shall suffer a loss equal to the surplus which might be expected from a system of higher duties.

I am sensible that there is great weight in the observation that fell from the honorable gentleman from South Carolina, (Mr. TUCKER,) that it will be necessary, on the one hand, to weigh and regard the sentiments of the gentlemen from the different parts of the United States; but, on the other hand, we must limit our consideration on this head, and, notwithstanding all the deference and respect we pay to those sentiments, we must consider the general interest of the Union; for this is as much every gentleman's duty to consider as is the local or State interest—and any system of impost that this committee may adopt must be founded on the principles of mutual concession.

Gentlemen will be pleased to recollect, that those parts of the Union which contribute more under one system than the other, are also those parts more thinly planted, and consequently stand most in need of national protection; therefore they will have less reason to complain of unequal burdens.

There is another consideration: the States that are most advanced in population, and ripe for manufactures, ought to have their particular interests attended to in some degree. While these States retained the power of making regulations of trade, they had the power to protect and cherish such institutions; by adopting the present Constitution they have thrown the exercise of this power into other hands; they must have done this with an expectation that those interests would not be neglected here.

I am afraid, sir, on the one hand, that if we go fully into a discussion of the subject, we shall consume more time than prudence would dictate to spare; on the other hand, if we do not develope it, and see the principles on which we mutually

act, we shall subject ourselves to great difficulties. I beg leave, therefore, to state the grounds on which my opinion, with respect to the matter under consideration, is founded, namely, whether our present system should be a temporary or a permanent one? In the first place, I own myself the friend to a very free system of commerce, and hold it as a truth, that commercial shackles are generally unjust, oppressive, and impolitic; it is also a truth, that if industry and labor are left to take their own course, they will generally be directed to those objects which are the most productive, and this in a more certain and direct manner than the wisdom of the most enlightened Legislature could point out. Nor do I think that the national interest is more promoted by such restrictions than that the interest of individuals would be promoted by legislative interference directing the particular application of its industry. For example, we should find no advantage in saying that every man should be obliged to furnish himself, by his own labor, with those accommodations which depend on the mechanic arts, instead of employing his neighbor, who could do it for him on better terms. It would be of no advantage to the shoemaker to make his own clothes to save the expense of the tailor's bill, nor of the tailor to make his own shoes to save the expense of procuring them from the shoemaker. It would be better policy to suffer each of them to employ his talents in his own way. The case is the same between the exercise of the arts and agriculture—between the city and the country—and between city and town; each capable of making particular articles in abundance to supply the other: thus all are benefited by exchange, and the less this exchange is cramped by Government, the greater are the proportions of benefit to each. The same argument holds good between nation and nation, and between parts of the same nation.

In my opinion it would be proper also for gentlemen to consider the means of encouraging the great staple of America, I mean agriculture; which I think may justly be styled

the staple of the United States, from the spontaneous productions which nature furnishes, and the manifest advantage it has over every other object of emolument in this country. If we compare the cheapness of our land with that of other nations, we see so decided an advantage in that cheapness, as to have full confidence of being unrivalled. With respect to the object of manufactures, other countries may and do rival us; but we may be said to have a monopoly in agriculture; the possession of the soil, and the lowness of its price, give us as much a monopoly in this case as any nation or other parts of the world have in the monopoly of any article whatever; but with this advantage to us, that it cannot be shared nor injured by rivalship.

If my general principle is a good one, that commerce ought to be free, and labor and industry left at large to find its proper object, the only thing which remains will be to discover the exceptions that do not come within the rule I have laid down. I agree with the gentleman from Pennsylvania, that there are exceptions important in themselves, and which claim the particular attention of the committee. Although the freedom of commerce would be advantageous to the world, yet, in some particulars, one nation might suffer to benefit others, and this ought to be for the general good of society.

If America was to leave her ports perfectly free, and make no discrimination between vessels owned by her citizens and those owned by foreigners, while other nations make this discrimination, it is obvious that such policy would go to exclude American shipping altogether from foreign ports, and she would be materially affected in one of her most important interests. To this we may add another consideration, that by encouraging the means of transporting our productions with facility, we encourage the raising them: and this object, I apprehend, is likely to be kept in view by the General Government.

Duties laid on imported articles may have an effect which

comes within the idea of national prudence. It may happen that materials for manufactures may grow up without any encouragement for this purpose; it has been the case in some of the States, but in others regulations have been provided, and have succeeded in producing some establishments, which ought not to be allowed to perish, from the alteration which has taken place: it would be cruel to neglect them and divert their industry to other channels; for it is not possible for the hand of man to shift from one employment to another without being injured by the change. There may be some manufactures, which, being once formed, can advance towards perfection without any adventitious aid, while others, for want of the fostering hand of Government, will be unable to go on at all. Legislative attention will therefore be necessary to collect the proper objects for this purpose, and this will form another exception to my general principle.

I observe that a sumptuary prohibition is within the view of some of the proposed articles, and forms another exception. I acknowledge that I do not, in general, think any great national advantage arises from restrictions passed on this head, because, as long as a distinction in point of value subsists, sumptuary duties, in some form or other, will prevail and take effect.

Another exception is embargoes in time of war. These may necessarily occur and shackle the freedom of commerce; but the reasons for this are so obvious, that it renders any remark unnecessary.

The next exception that occurs, is one on which great stress is laid by some well informed men, and this with great plausibility. That each nation should have within itself the means of defence, independent of foreign supplies: that in whatever relates to the operations of war, no State ought to depend upon a precarious supply from any part of the world. There may be some truth in this remark, and therefore it is proper for legislative attention. I am, though, well persuaded that the reasoning on this subject has been carried too far. The

difficulties we experienced a few years ago of obtaining military supplies, ought not furnish too much in favor of an establishment which would be difficult and expensive; because our national character is now established and recognised throughout the world, and the laws of war favor national exertion more than intestine commotion, so that there is good reason to believe that, when it becomes necessary, we may obtain supplies from abroad as readily as any other nation whatsoever. I have mentioned this because I think I see something among the enumerated articles that seems to favor such a policy.

The impost laid on trade for the purpose of obtaining revenue may likewise be considered as an exception; so far, therefore, as revenue can be more conveniently and certainly raised by this than any other method, without injury to the community, and its operation will be in due proportion to the consumption, which consumption is generally proportioned to the circumstances of individuals, I think sound policy dictates to use this means; but it will be necessary to confine our attention at this time peculiarly to the object of revenue, because the other subject involves some intricate questions, to unravel which we perhaps are not prepared. I have no objection to the committee's accepting the propositions offered by the gentleman from Pennsylvania, because so far as we can enumerate the proper objects, and apply specific duties to them, we conform to the practice prevalent in many of the States, and adopt the most laudable method of collecting revenue; at least preferable to laying a general tax. Whether, therefore, we consult ease and convenience in collection, or pursuing habits already adopted and approved, specific duties, as far as the articles can be properly enumerated, is the most eligible mode of obtaining the end in contemplation. Upon the whole, as I think some of the propositions may be productive of revenue, and some may protect our domestic manufactures, though the latter subject ought not to be too confusedly blended with the former,

I hope the committee will receive them, and let them lie over, in order that we may have time to consider how far they are consistent with justice and policy.[1]

APRIL 21. DUTIES ON IMPORTS.

Some gentlemen have seemed to call in question the policy of discriminating between nations in commercial alliance with the United States, and those with whom no treaties exist. For my own part, I am well satisfied that there are good and substantial reasons for making it. In the first place, it may not be unworthy of consideration, that the public sentiments of America will be favorable to such discrimination. I am sure, with respect to that part from which I come, it will not be a pleasing ingredient in your laws, if they find foreigners of

[1] April 12, Madison wrote to Randolph:

"On the subject of amendments nothing has been publickly, and very little privately said. Such as I am known to have espoused will as far as I can gather, be attainable from the federalists, who sufficiently predominate in both branches; though with some, the concurrence will proceed from a spirit of conciliation rather than conviction. Connecticut is least inclined though I presume not inflexibly opposed, to a moderate revision. A paper wch will probably be republished in the Virg^a^ Gazettes, under the signature of a Citizen of New Haven, unfolds *Mr. Sherman's* opinions. Whatever the amendments may be it is clear that they will be attempted in no other way than through Congress. Many of the warmest of the opponents of the Gov^t^ disavow the mode contended for by Virg^a^

"I wish I could see an equal prospect of appeasing the disquietude on the two other points you mention—British debts and taxes. With respect to the first, you know my sentiments. It will be the duty of the Senate in my opinion to promote regulations with G. B. as speedily as circumstances will admit, and the aspect of the Govern^t^ seems likely to command a respectful attention to its measures. I see nothing else that can be done. As to the taxes I see nothing that can be done, more than the ordinary maxims of policy suggest. They may certainly be diminished in consequence of the revolution in the federal Gov [*torn out*], since the public wants will be little if at all increased, [*torn out*] be supplied in greater proportion out of commerce."—*Mad. MSS.*

every nation put on a footing with those in alliance with us. There is another reason, which, perhaps, is more applicable to some parts of the Union than others; one of the few nations with which America has formed commercial connexions has relaxed considerably in that rigid policy it before pursued—not so far, to be sure, as America could wish, with respect to opening her ports to our trade; but she has permitted our ready built ships a sale, and entitles them to the same advantage, when owned by her own citizens, as if they had been built in France, subjecting the sale to a duty of five per cent. The British market receives none; the disabilities of our ships to trade with their colonies continue, even if they are purchased by the subjects of Great Britain; of consequence, they cannot be sold without a considerable loss. Nay, so cautious are they to prevent the advantages we naturally possess, that they will not suffer a British ship to be repaired in America, beyond a certain proportion of her value; they even will not permit our vessels to be repaired in their ports.

Another consideration has some weight with me in deciding the question of discrimination. The policy of our ally, from the views of the minister employed, has frequently been adverse to the interest of this country. The person who has had the charge of our affairs at that Court has long been soliciting a relaxation in our favor, and although it cannot be declared that he has succeeded, yet there is reason to believe he has made some impressions, which our conduct ought to avoid effacing; they are such as merit national attention, and might justify a discrimination at this time, although it may be proper to hold ourselves at liberty to pursue that policy which a change may make necessary. There are also other considerations which ought to be taken into view. From artificial or adventitious causes, the commerce between America and Great Britain exceeds what may be considered its natural boundary. I find from an examination of the accounts of tonnage for the three large States of

Massachusetts, Virginia, and South Carolina, that the tonnage of nations in alliance with us holds no proportion with that of Great Britain, or of the United States. This is a proof that a very small direct commerce takes place between those countries and this; that there is less of direct intercourse than there would naturally be if those extraneous and adventitious causes did not prevent it; such as the long possession of our trade, their commercial regulations calculated to retain it, their similarity of language and manners, their conformity of laws and other circumstances—all these concurring have made their commerce with us more extensive than their natural situation would require it to be. I would wish, therefore, to give such political advantages to those nations, as might enable them to gain their proportion of our direct trade from the nation who has acquired more than it is naturally her due. From this view of the subject, I am led to believe it would be good policy to make the proposed discrimination between them. Is it not also of some importance, that we should enable nations in treaty with us to draw some advantage from our alliance, and thereby impress those Powers that have hitherto neglected to treat with us, with the idea that advantages are to be gained by a reciprocity of friendship? If we give every thing equally to those who have or have not formed treaties, surely we do not furnish to them any motive for courting our connexion.

It has been objected, that the price of our produce at foreign markets would not bear this additional burden, and that the freight must be paid by the planters. It will be unnecessary, after what was said by the gentleman from Pennsylvania, (Mr. FITZSIMONS,) to take up the time of the committee in observing that foreigners must receive our tobacco, rice, &c., in American shipping, if they cannot be otherwise got. There may be a discrimination made in other respects besides in tonnage, so that a very high impost on this article need not be insisted upon. But will any gentleman say, British vessels ought to enjoy in American ports greater

advantages than are enjoyed by Americans in British ports? Yet were theduties laid equal in both cases, the British merchant would have a very great superiority. In the first place, some of the most valuable ports which she possesses, and most conducive to our interest, are absolutely closed, while every port in the United States is open to her without restriction or limitation. Again, even in those which it is permitted America to enter her vessels, she must bring nothing but the produce of her own soil, whilst the British ship makes circuitous voyages, and brings with her the produce of every quarter of the globe. These are material advantages; and take the whole of these observations together, I think they furnish substantial reasons for making the proposed discrimination.

APRIL 21. DUTIES ON IMPORTS.

I am a friend to free commerce, and, at the same time, a friend to such regulations as are calculated to promote our own interest, and this on national principles. The great principle of interest is a leading one with me, and yet my combination of ideas on this head leads me to a very different conclusion from that made by the gentleman from New York, (Mr. LAWRENCE.) I wish we were under less necessity than I find we are to shackle our commerce with duties, restrictions, and preferences; but there are cases in which it is impossible to avoid following the example of other nations in the great diversity of our trade. Some reasons for this were mentioned on a former occasion; they have been frequently illustrated in the progress of this business, and the decision of the committee has proved them to be necessary.

I beg leave to remark, in answer to a train of ideas which the gentleman last up has brought into view, that although interest will, in general, operate effectually to produce political good, yet there are causes in which certain factitious circumstances may divert it from its natural channel, or throw

or retain it in an artificial one. Have we not been exercised on this topic for a long time past? Or why has it been necessary to give encouragement to particular species of industry, but to turn the stream in favor of an interest that would not otherwise succeed? But laying aside the illustration of these causes, so well known to all nations, where cities, companies, or opulent individuals engross the business from others, by having had an uninterrupted possession of it, or by the extent of their capitals being able to destroy a competition, let us proceed to examine what ought to be our conduct on this principle, upon the present occasion. Suppose two commercial cities, one possessed of enormous capitals and long habits of business, whilst the other is possessed of superior natural advantages, but without that course of business and chain of connexions which the other has: is it possible, in the nature of things, that the latter city should carry on a successful competition with the former? Thus it is with nations; and when we consider the vast quantities of our produce sent to the different parts of Europe, and the great importations from the same places; that almost all of this commerce is transacted through the medium of British ships and British merchants, I cannot help conceiving that, from the force of habit and other conspiring causes, that nation is in possession of a much greater proportion of our trade than she is naturally entitled to. Trade, then, being restrained to an artificial channel, is not so advantageous to America as a direct intercourse would be; it becomes therefore the duty of those to whose care the public interest and welfare are committed, to turn the tide to a more favorable direction.

In the trade of South Carolina is employed annually about 56,977 tons of shipping. The proportion of French and Dutch is about 2,100 tons, while that of Great Britain is about 19,000. In Massachusetts the quantity is about 85,551 tons; it is stated, that there are belonging to the State, 76,857, the remainder is foreign, and mostly British. In Virginia we have 56,272 tons; 26,903 British, and only 2,664 of the

French and Dutch. I cannot, from this view of the subject, be persuaded to believe that every part of our trade flows in those channels which would be most natural and profitable to us, or those which reason would dictate to us, if we were unincumbered of old habits and other accidental circumstances that hurry us along.

It has been asked by the gentleman from New York (Mr. LAWRENCE) what evidence we had that the public sentiments of America were in favor of discrimination? Perhaps it would be improper on this occasion to adduce any other proof of the fact than from the transactions of public bodies; and here, I think, is abundant proof to be found. The State of Virginia, if I am not mistaken, lays a double duty on tonnage; French and Dutch vessels pay half a dollar per ton, while the vessels of Great Britain are subjected to one dollar. There are other distinctions in our revenue laws manifesting the same principle; some of them establish a preference to French wines and brandy. In Maryland, a similar policy has prevailed. I believe the difference there is about one-third in favor of our allies, (if I err, the gentlemen from that State can set me right;) in Pennsylvania, there is a discrimination of about a fourth. I do not certainly recollect, but I believe the like policy exists in other States; but I have not had an opportunity of searching their laws on this point, but what I have enumerated are facts affording substantial proof that the public sentiment does favor the discrimination.

MAY 9. DUTIES ON IMPORTS.

The right understanding of this subject is of great importance. The discussion has been drawn out to a very considerable length on former occasions. The chain of ideas on which the subject is suspended, is not very long, nor consists of many links. The present Constitution was framed to supply the defects of the one that has preceded it. The great and material defects of it are well known to have arisen from

its inability to provide for the demands of justice and security of the Union. To supply those defects, we are bound to fulfil the public engagements; expectation is anxiously waiting the result of our deliberations; it cannot be satisfied without a sufficient revenue to accomplish its purposes. We cannot obtain the money any other way but by taxation. Among the various objects of this nature, an impost on merchandise imported is preferable to all others, and among the long list of articles included in the bill, there is not one more proper for the purpose than the article under consideration. The public sentiment has strongly pointed it out as an object of revenue. I conceive, therefore, that it will be our duty to draw from this source all the money that it is capable of yielding. I am sure that it will not exceed our wants, nor extend to the injury of our commerce. How far the powers of Government are capable of going on this occasion, is matter of opinion; we have had no direct experiment of what can be done under the energy and popularity of the new system; we must recur to other sources for information, and then, unless the circumstances are alike, the comparison may not be true. We have been referred to the experience of other nations; if that is to guide us on this subject, I am sure we shall find precedents for going much further than is now proposed. If I do not mistake the calculations that I have seen of duties on importation, they amount to more on an average than fifteen per cent.; the duty on ardent spirits in all nations exceeds what is in contemplation to be laid in the United States. I am sensible that the means which are used by those nations to ensure the collection, would be odious and improper in this country; but I believe the means which this country is capable of using, without exciting complaint or incurring too much expense, would be as adequate to secure a duty of fifteen per cent. as the powers of any other nation could be to obtain ninety or one hundred per cent. If we consult the experience of the United States, it does not admonish us that we are proceeding too far; there are duties

now under collection, in some States, that amount nearly to the same as those we have in contemplation. A duty collected under the feeble operation of the State Governments, cannot be supposed beyond our powers, when those duties have been collected by them, with feeble powers, but under a competition, not to say opposition, of the neighboring States. I am led, from a knowledge of these circumstances, to believe that when we have established some general rule, and have the co-operation of all the members of the Union, we shall be able to do what is proposed by this bill, better than any one State could execute it with its separate strength. If we consult the opinion of the merchants, we shall not find them a very sure guide. Merchants do not pretend to infallibility; but if they did, they have given a proof to the contrary, by their difference of opinion on this subject. Gentlemen of that profession, both within these walls and out of doors, have been as much divided on this point as any other description of men. I believe them to be the best informed as to the probable effects of an impost system, but they are not exempt from the infirmities of human nature. We know there is an essential difference between the interest of merchants and the interest of commerce; we know there may be distinctions also between the interest of commerce and of revenue; and that in some cases we must sacrifice the one to the other. I am not sure that we are not under the necessity of doing both in the business before us. It is barely matter of opinion what revenue the General Government will be able to draw from the system now proposed. This being the case, I have endeavored to make up mine, from the best materials in my power. I pay great respect to the opinions of mercantile gentlemen, and am willing to concede much to them, so far as their opinions are regulated by experience; but if I am to be guided by this information, it will not lead me to agree to the reduction of the duties in the manner contended for. It is said, that if we reduce at all, we must go through the whole. Now I doubt whether the duty on the

article of rum exceeds that proportion which pervades the long list before us. It does not amount to more than thirty per cent., while some other articles stand at forty; some articles again that are not enumerated, but which fall within the general mass at five per cent., are more likely to be introduced clandestinely than this article, if it stood at fifty per cent. I am sure, if we reduce the whole system in the manner now proposed, all the duty we shall be able to collect will be very incompetent to what the public necessities demand. We must turn our eyes, then, to some other source that will fill up the deficiency. There are but two objects to which, in this dilemma, we can have recourse—direct taxation and excises. Direct taxation is not contemplated by any gentleman on this floor, nor are our constituents prepared for such a system of revenue; they expect it will not be applied to, until it is found that sufficient funds cannot be obtained in any other way. Excises would give particular disgust in some States, therefore gentlemen will not make up the deficiency from that quarter. I think, upon the whole, it is better to try what will be produced by a plan which is favored by the public sentiment. This will give a support to our laws equal to the greatest energy of a strong execution. The citizens of America know that their individual interest is connected with the public. We shall then have the strong motive of interest acting in favor of the Government in a peculiar manner. But I am not inclined to trust too much to this security. I would take in the aid of the best regulations in our power to provide; these, acting in concert, would give a moral certainty to the faithful collection of the revenue. But if gentlemen notwithstanding will persist in contending against such a system, and cannot offer us a substitute, we must fail of the primary object for which the Government was created. If upon experience we find that the duties cannot be safely collected, it may be proper to reduce them; but if we set them too low in the first instance, and they do not yield a sufficiency to answer the just demands of the public

creditors and the expenses of Government, the public reputation must suffer.

I need not inform gentlemen we are surrounded with difficulties; they are seen on every side; but they appear as few and as surmountable on the side of the bill, as they do in any other part of the prospect. If we give way on this article, we are to do so upon all others. It is not for any reason peculiar to Jamaica spirits that the reduction is moved for; hence, I conceive, if gentlemen meet with success in opposing this duty, we shall be reduced to a system inadequate to our wants, and thereby defeat the chief object of our appointment.[1]

MAY 11. TITLES.

I may be well disposed to concur in opinion with gentlemen that we ought not to recede from our former vote on this subject, yet at the same time I may wish to proceed with due respect to the Senate, and give dignity and weight to our own opinion, so far as it contradicts theirs, by the deliberate and decent manner in which we decide. For my

[1] Madison wrote to Jefferson, May 9:

"The distinction between nations in & not in Treaty has given birth to three distinct & urgent debates. On the last the minority was very small for putting G. B. at once on the same footing with the most favored nation. This policy, tho. patronized by some respectable names is chiefly abetted by the spirit of this City, which is steeped in Anglicism. It is not improbable from the urgency of its representative, that a further effort may be yet made.

"Inclosed is the Speech of the President with the Address of the House of Repˢ & his reply. You will see in the caption of the address that we have pruned the ordinary stile of the degrading appendages of Excellency, Esqʳ, &c, and restored it to its naked dignity. *Titles* to both the President & vice President were formally & unanimously condemned by a vote of the H. of Repˢ This I hope will shew to the friends of Republicanism that our new Government was not meant to substitute either Monarchy or Aristocracy, and that the genius of the people is as yet adverse to both."—*Mad. MSS.*

The formal reply by the House to the President's speech was written by Madison and adopted May 5.

part, Mr. Speaker, I do not conceive titles to be so pregnant with danger as some gentlemen apprehend. I believe a President of the United States, clothed with all the powers given in the Constitution, would not be a dangerous person to the liberties of America, if you were to load him with all the titles of Europe or Asia. We have seen superb and august titles given, without conferring power and influence, or without even obtaining respect. One of the most impotent sovereigns in Europe has assumed a title as high as human invention can devise; for example, what words can imply a greater magnitude of power and strength than that of High Mightiness? This title seems to border almost upon impiety; it is assuming the pre-eminence and omnipotence of the Deity; yet this title, and many others cast in the same mould, have obtained a long time in Europe, but have they conferred power? Does experience sanction such an opinion? Look at the Republic I have alluded to, and say if their present state warrants the idea?

I am not afraid of titles, because I fear the danger of any power they could confer, but I am against them because they are not very reconcilable with the nature of our Government or the genius of the people. Even if they were proper in themselves, they are not so at this juncture of time. But my strongest objection is founded in principle; instead of increasing, they diminish the true dignity and importance of a Republic, and would in particular, on this occasion, diminish the true dignity of the first magistrate himself. If we give titles, we must either borrow or invent them. If we have recourse to the fertile fields of luxuriant fancy, and deck out an airy being of our own creation, it is a great chance but its fantastic properties would render the empty phantom ridiculous and absurd. If we borrow, the servile imitation will be odious, not to say ridiculous also; we must copy from the pompous sovereigns of the East, or follow the inferior potentates of Europe; in either case, the splendid tinsel or grogeous robe would disgrace the manly shoulders of our

chief. The more truly honorable shall we be, by showing a total neglect and disregard to things of this nature; the more simple, the more Republican we are in our manners, the more rational dignity we shall acquire; therefore, I am better pleased with the report adopted by the House, than I should have been with any other whatsoever.

The Senate, no doubt, entertain different sentiments on this subject. I would wish, therefore, to treat their opinion with respect and attention. I would desire to justify the reasonable and republican decision of this House to the other branch of Congress, in order to prevent a misunderstanding. But that the motion of my worthy colleague (Mr. PARKER) has possession of the House, I would move a more temperate proposition, and I think it deserves some pains to bring about that good will and urbanity, which, for the despatch of public business, ought to be kept up between the two Houses. I do not think it would be a sacrifice of dignity to appoint a Committee of Conference, but imagine it would tend to cement that harmony which has hitherto been preserved between the Senate and this House; therefore, while I concur with the gentlemen who express, in such decided terms, their disapprobation of bestowing titles, I concur also with those who are for the appointment of a Committee of Conference, not apprehending they will depart from the principles adopted and acted upon by the House.

MAY 12. DUTIES ON IMPORTS.

Mr. MADISON said his mind was incapable of discovering any plan that would answer the purpose the committee have in view, and not produce greater evils than the one under consideration. He thought an excise very objectionable, but as no actual proposition for entering into such a system was before the committee, he forebore to say any thing further about it. He admitted an excise would obviate in part some of the difficulties; but he did not think the answer given to

his argument altogether satisfactory; yet there was another argument he urged on a former occasion remaining unanswered—it was, that, at this moment, the fisheries, distilleries, and all their connexions, were laboring under heavier duties than what is now proposed; true, the duty is collected in a different mode, but it affects the consumer in the same manner. The gentlemen have said, to be sure, that the duty is evaded; but if half is collected, it will amount to more than six cents per gallon.

It is said that a tax on molasses will be unpopular, but not more so than a tax on salt. Can gentlemen state more serious apprehensions in the former than the latter case? yet the committee did not forego a productive fund, because the article was a necessary of life, and in general consumption. If there is the disposition that is represented for people to complain of the oppression of Government, have not the citizens of the Southern States more just ground of complaint than others? The system can only be acceptable to them, because it is essentially necessary to be adopted for the public good.

Gentlemen argue, that a tax on molasses is unpopular, and prove it by experience under the British Government. If this is to be adduced as a proof of the popularity of the measure, what are we to say with respect to a tax on tea? Gentlemen remembered, no doubt, how odious this kind of tax was thought to be throughout America; yet the House had, without hesitation, laid a considerable duty upon it. He did not imagine that a duty on either of those articles, was in itself objectionable; it was the principle upon which the tax was laid that made them unpopular under the British Government.

It is said that this tax is unjust; now, he had not a single idea of justice, that did not contradict the position. If it be considered as it relates to rum, he was certain the consumers of foreign rum paid a larger proportion of revenue into the Treasury than the consumers of country rum; they paid more than equal distributive justice required; if it was con-

sidered as it respected molasses, there would appear no injustice. Molasses was consumed in other States; but if it was not, sugar was used in its stead, and subjected to a duty full as high as that on molasses. But dismissing both these considerations, and even admitting the whole weight to fall on the Northern States, it would not be disproportioned, because, in the long list of enumerated articles subject to a high duty, they imported few or none; indeed, the articles were pretty generally taxed for the benefit of the manufacturing part of the northern community; see loaf sugar, candles, cheese, soap, &c. He hoped gentlemen would not infer from this observation, that he thought the encouragement held out by the bill to manufactures improper; far from it; he was glad to see their growing consequence, and was disposed to give them every aid in his power. From this view of the subject, he was inclined to adhere to the bill, and not make any reduction.

MAY 14. DUTIES ON IMPORTS.

When he offered this amendment to the bill, he thought its propriety was so obvious and striking, that it would meet no opposition. To pass a bill,[1] not limited in duration, which was to draw revenue from the pockets of the people, appeared to be dangerous in the administration of any Government; he hoped, therefore, the House would not be less cautious in this particular than other nations are, who profess to act upon sound principles. He imagined it might be considered by their constituents as incompatible with the spirit of the Constitution, and dangerous to republican principles, to pass such a law unlimited in its duration.

He hoped it would not be understood by gentlemen who opposed his motion, that he supposed them to be actuated with a desire to do injury to either of those principles; he believed them to be moved only by an ardent desire to promote the general welfare, by the re-establishment of public

[1] The Bill was passed by the House May 16.

credit. He would heartily join his labors with theirs, to effect this object, but wished to do it in a way, that while they served their country, they might secure the liberties of the people, and do honor to themselves. Besides the restoration of public credit, he thought the act had in view the encouragement of a particular description of people, which might lead them into enterprises of a peculiar nature, for the protection of which the public faith seemed to be pledged. But would gentlemen infer from hence, that no alteration ought to take place if the manufactures were well established? The subject appeared to him in a twofold point of view; first, to provide for the exigencies of Government, and second, for the establishment of public credit; but he thought both these objects could be obtained without making the bill perpetual. If the Government showed a proper attention to the punctual performance of its engagements, it would obtain the latter; the other would be secured by making provision as the occasion demanded. If the bill was to be made perpetual, it would be continued after the purpose for which it was adopted had ceased; the error would in this case be irremediable; whereas, if its limitation was determined, it would always be in the power of the Government to make it commensurate with what the public debts and contingencies required.

The Constitution, as had already been observed, places the power in the House of originating money bills. The principal reason why the Constitution had made this distinction was, because they were chosen by the people, and supposed to be best acquainted with their interests and ability. In order to make them more particularly acquainted with these objects, the democratic branch of the Legislature consisted of a greater number, and were chosen for a shorter period, so that they might revert more frequently to the mass of the people. Now, if a revenue law was made perpetual, however unequal its operation might be, it would be out of the power of this House to effect an alteration; for if the President

chose to object to the measure, it would require two-thirds of both Houses to carry it. Even if the House of Representatives were unanimous in their opinion that the law ought to be repealed, they would not be able to carry it, unless a great majority appeared in the Senate also.

He observed, that an honorable gentleman had thought that no appropriation of the public money could be made for a longer term than two years. This was true, as it related to the support of armies; but the question here did not appear to be respecting an appropriation. It was the revenue itself, which, without any appropriation, might continue flowing into the public treasury independent of the will of the people, and might thereby become a convenience in the hands of some other department of the Government, for the purpose of oppression. Experience might also forcibly suggest the necessity and importance of alterations in the law, yet, without this clause, it might never be in the power of the House to make them.[1]

MAY 19. POWER OF REMOVAL FROM OFFICE.

Mr. MADISON did not concur with the gentleman in his interpretation of the Constitution.[2] What, said he, would

[1] Madison wrote Pendleton May 17:

"DEAR SIR,—

"The progress of our revenue system continues to be slow. The bill rating the duties is still with the Senate. It is said that many alterations will be proposed, consisting of reductions chiefly. It is said also that the proposition for putting G. B. on the same footing with our Allies in all respects, prior to a treaty with her, will have a majority in that House, and will undergo another agitation in the House of Rep^s. It had before three trials in the latter, but it lost ground in each, and finally was in a minority of 9 or 10 ag^st near 40. I think it an impolitic idea as it relates to our foreign interest, and not less so perhaps as it relates to the popular sentiment of America, particularly of Virg^a and still more particularly of that part of it which is already most dissatisfied with the new Government."—*Mad. MSS.*

[2] The Debate was on the creation of a Department of Foreign Affairs. Smith, of South Carolina, said the head of the Department could only

be the consequence of such construction? It would in effect establish every officer of the Government on the firm tenure of good behaviour; not the heads of Departments only, but all the inferior officers of those Departments, would hold their offices during good behaviour, and that to be judged of by one branch of the Legislature only on the impeachment of the other. If the Constitution means this by its declarations to be the case, we must submit; but I should lament it as a fatal error interwoven in the system, and one that would ultimately prove its destruction. I think the inference would not arise from a fair construction of the words of that instrument.

It is very possible that an officer who may not incur the displeasure of the President, may be guilty of actions that ought to forfeit his place. The power of this House may reach him by the means of an impeachment, and he may be removed even against the will of the President; so that the declaration in the Constitution was intended as a supplemental security for the good behaviour of the public officers. It is possible the case I have stated may happen. Indeed, it may, perhaps, on some occasion, be found necessary to impeach the President himself; surely, therefore, it may happen to a subordinate officer, whose bad actions may be connived at or overlooked by the President. Hence the people have an additional security in this Constitutional provision.

I think it absolutely necessary that the President should have the power of removing from office; it will make him, in a peculiar manner, responsible for their conduct, and subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses. On the Constitutionality of the declaration I have no manner of doubt.

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be removed by impeachment before the Senate, and that, "being once in office, he must remain there until convicted on impeachment." —*Annals of Congress*, i., 372.

I look upon every Constitutional question, whatever its nature may be, as of great importance. I look upon the present to be doubly so, because its nature is of the highest moment to the well-being of the Government. I have listened with attention to the objections which have been stated, and to the replies that have been made, and I think the investigation of the meaning of the Constitution has supported the doctrine I brought forward. If you consult the expediency, it will be greatly against the doctrine advanced by gentlemen on the other side of the question. See to what inconsistency gentlemen drive themselves by their construction of the Constitution. The gentleman from South Carolina, (Mr. SMITH,) in order to bring to conviction and punishment an offender in any of the principal offices, must have recourse to a breach of the common law, and yet he may there be found guilty, and maintain his office, because he is fixed by the Constitution. It has been said, we may guard against the inconveniency of that construction, by limiting the duration of the office to a term of years; but, during that term, there is no way of getting rid of a bad officer but by impeachment. During the time this is depending, the person may continue to commit those crimes for which he is impeached, because if his construction of the Constitution is right, the President can have no more power to suspend than he has to remove.

What fell from one of my colleagues (Mr. BLAND) appears to have more weight than any thing hitherto suggested. The Constitution, at the first view, may seem to favor his opinion; but that must be the case only at the first view; for, if we examine it, we shall find his construction incompatible with the spirit and principles contained in that instrument.

It is said, that it comports with the nature of things, that those who appoint should have the power of removal; but I cannot conceive that this sentiment is warranted by the Constitution; I believe it would be found very inconvenient in practice. It is one of the most prominent features of the

Constitution, a principle that pervades the whole system, that there should be the highest possible degree of responsibility in all the Executive officers thereof; any thing, therefore, which tends to lessen this responsibility, is contrary to its spirit and intention, and, unless it is saddled upon us expressly by the letter of that work, I shall oppose the admission of it into any act of the Legislature. Now, if the heads of the Executive departments are subjected to removal by the President alone, we have in him security for the good behaviour of the officer. If he does not conform to the judgment of the President in doing the executive duties of his office, he can be displaced. This makes him responsible to the great Executive power, and makes the President responsible to the public for the conduct of the person he has nominated and appointed to aid him in the administration of his department. But if the President shall join in a collusion with this officer, and continue a bad man in office, the case of impeachment will reach the culprit, and drag him forth to punishment. But if you take the other construction, and say he shall not be displaced but by and with the advice and consent of the Senate, the President is no longer answerable for the conduct of the officer; all will depend upon the Senate. You here destroy a real responsibility without obtaining even the shadow; for no gentleman will pretend to say the responsibility of the Senate can be of such a nature as to afford substantial security. But why, it may be asked, was the Senate joined with the President in appointing to office, if they have no responsibility? I answer, merely for the sake of advising, being supposed, from their nature, better acquainted with the character of the candidates than an individual; yet even here the President is held to the responsibility—he nominates, and, with their consent, appoints. No person can be forced upon him as an assistant by any other branch of the Government.

There is another objection to this construction, which I consider of some weight, and shall therefore mention to the

committee. Perhaps there was no argument urged with more success, or more plausibly grounded against the Constitution, under which we are now deliberating, than that founded on the mingling of the Executive and Legislative branches of the Government in one body. It has been objected, that the Senate have too much of the Executive power even, by having a control over the President in the appointment to office. Now, shall we extend this connexion between the Legislative and Executive departments, which will strengthen the objection, and diminish the responsibility we have in the head of the Executive? I cannot but believe, if gentlemen weigh well these considerations, they will think it safe and expedient to adopt the clause.

MAY 22. CITIZENSHIP OF THE UNITED STATES.

I think the merit of the question is now to be decided, whether the gentleman is eligible to a seat in this House or not; but it will depend on the decision of a previous question, whether he has been seven years a citizen of the United States or not.

From an attention to the facts which have been adduced, and from a consideration of the principles established by the Revolution, the conclusion I have drawn is, that Mr. SMITH was, on the declaration of independence, a citizen of the United States; and unless it appears that he has forfeited his right, by some neglect or overt act, he had continued a citizen until the day of his election to a seat in this House. I take it to be a clear point, that we are to be guided, in our decision, by the laws and constitution of South Carolina, so far as they can guide us; and where the laws do not expressly guide us, we must be guided by principles of a general nature, so far as they are applicable to the present case.

It were to be wished, that we had some law adduced, more precisely defining the qualities of a citizen or an alien; particular laws of this kind have obtained in some of the States;

if such a law existed in South Carolina, it might have prevented this question from ever coming before us; but since this has not been the case, let us settle some general principle before we proceed to the presumptive proof arising from public measures under the law, which tend to give support to the inference drawn from such principles.

It is an established maxim that birth is a criterion of allegiance. Birth, however, derives its force sometimes from place, and sometimes from parentage; but, in general, place is the most certain criterion; it is what applies in the United States; it will, therefore, be unnecessary to investigate any other. Mr. SMITH founds his claim upon his birthright; his ancestors were among the first settlers of that colony.

It is well known to many gentlemen on this floor, as well as to the public, that the petitioner [1] is a man of talents, one who would not lightly hazard his reputation in support of visionary principles: yet I cannot but think he has erred in one of the principles upon which he grounds his charge. He supposes, when this country separated from Great Britain, the tie of allegiance subsisted between the inhabitants of America and the King of that nation, unless, by some adventitious circumstance, the allegiance was transferred to one of the United States. I think there is a distinction which will invalidate his doctrine in this particular, a distinction between that primary allegiance which we owe to that particular society of which we are members, and the secondary allegiance we

[1] Dr. David Ramsay, the historian, of South Carolina. See his petition in *Annals of Congress*, i., 403. He wrote to Madison, Charleston, April 4, 1789: "One of the elected federal representatives of this State is, in my opinion, inelegible. The case is in short thus: the gentleman alluded to left Carolina in the year 1770 his parents died about the same time and he was absent from America during the whole of the war till November 1783. As in the time of his absence the revolution took place I contend that in order to his becoming a Citizen of the United States some thing must have been done previously on his part to shew his acquiescence in the new Government established without his consent."—*Mad. MSS.*

owe to the Sovereign established by that society. This distinction will be illustrated by the doctrine established by the laws of Great Britain, which were the laws of this country before the Revolution. The Sovereign cannot make a citizen by any act of his own; he can confer denizenship: but this does not make a man either a citizen or subject. In order to make a citizen or subject, it is established, that allegiance shall first be due to the whole nation; it is necessary that a national act should pass to admit an individual member. In order to become a member of the British empire, where birth has not endowed the person with that privilege, he must be naturalized by an act of Parliament.

What was the situation of the people of America, when the dissolution of their allegiance took place by the declaration of independence? I conceive that every person who owed this primary allegiance to the particular community in which he was born, retained his right of birth, as a member of a new community; that he was consequently absolved from the secondary allegiance he had owed to the British Sovereign. If he were not a minor, he became bound, by his own act, as a member of the society who separated with him from a submission to a foreign country. If he were a minor, his consent was involved in the decision of that society to which he belonged by the ties of nature. What was the allegiance, as a citizen of South Carolina, he owed to the King of Great Britain? He owed his allegiance to him as a King of that society to which, as a society, he owed his primary allegiance. When that society separated from Great Britain, he was bound by that act, and his allegiance transferred to that society, or the Sovereign which that society should set up; because it was through his membership of the society of South Carolina that he owed allegiance to Great Britain.

This reasoning will hold good, unless it is supposed that the separation which took place between these States and Great Britain, not only dissolved the union between those countries, but dissolved the union among the citizens themselves: that

the original compact, which made them altogether one society, being dissolved, they could not fall into pieces, each part making an independent society; but must individually revert into a state of nature; but I do not conceive that this was, of necessity, to be the case; I believe such a revolution did not absolutely take place. But in supposing that this was the case, lies the error of the memorialist. I conceive the colonies remained as a political society, detached from their former connexion with another society, without dissolving into a state of nature; but capable of substituting a new form of Government in the place of the old one, which they had, for special considerations, abolished. Suppose the State of South Carolina should think proper to revise her constitution, abolish that which now exists, and establish another form of Government: surely this would not dissolve the social compact. It would not throw them back into a state of nature. It would not dissolve the union between the individual members of that society. It would leave them in perfect society, changing only the mode of action, which they are always at liberty to arrange. Mr. SMITH being then, at the declaration of independence, a minor, but being a member of that particular society, he became, in my opinion, bound by the decision of the society, with respect to the question of independence and change of Government; and if afterwards he had taken part with the enemies of his country, he would have been guilty of treason against that Government to which he owed allegiance, and would have been liable to be prosecuted as a traitor.

If it be said, that very inconvenient circumstances would result from this principle, that it would constitute all those persons who are natives of America, but who took part against the revolution, citizens of the United States, I would beg leave to observe, that we are deciding a question of right, unmixed with the question of expediency, and must, therefore, pay a proper attention to this principle. But I think it can hardly be expected by gentlemen that the principle will

operate dangeruosly. Those who left their country, to take part with Britain, were of two descriptions—minors, or persons of mature age. With respect to the latter, nothing can be inferred with respect to them from the decision of the present case; because they had the power of making an option between the contending parties; whether this was a matter of right or not is a question which need not be agitated in order to settle the case before us. Then, with respect to those natives who were minors at the Revolution, and whose case is analogous to Mr. SMITH'S, if we are bound by the precedent of such a decision as we are about to make, and it is declared that they owe a primary allegiance to this country, I still think we are not likely to be inundated with such characters; so far as any of them took part against us, they violated their allegiance, and opposed our laws; so, then, there can be only a few characters, such as were minors at the Revolution, and who have never violated their allegiance by a foreign connexion, who can be affected by the decision of the present question. The number, I admit, is large who might be acknowledged citizens on my principles; but there will very few be found daring enough to face the laws of the country they have violated, and against which they have committed high treason.

So far as we can judge by the laws of Carolina, and the practice and decision of that State, the principles I have adduced are supported; and I must own, that I feel myself at liberty to decide, that Mr. SMITH was a citizen at the declaration of independence, a citizen at the time of his election and, consequently, entitled to a seat in this Legislature.[1]

[1] TO THOMAS JEFFERSON.

NEW YORK, May 23, 1789.

DEAR SIR,—

. . . . . .

My last inclosed copies of the President's inaugural Speech and the answer of the House of Representatives. I now add the answer of the Senate. It will not have escaped you that the former was addressed

to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. It appears to me that this House is bound

When *the truth is ascertained & known*, unfavorable *impressions will be still more removed.*

The subject of amendments was to have been introduced on monday last, but is postponed in order that more urgent business may not be delayed. On monday seven-night it will certainly come forward. A Bill of rights, incorporated perhaps into the Constitution will be proposed, with a few other alterations most called for by the opponents of the Government and least objectionable to its friends.

As soon as Mr. Brown arrives who is the Representative of Kentucky, the admission of that district to the character of a State and a member of the Union, will claim attention. I foresee no difficulty, unless local jealousy should couple the pretensions of Vermont with those of Kentucky; and even then no other delay than what may be necessary to open the way for the former, through the forms and perhaps the objections of this State, N. York which must not be altogether disregarded.

The proceedings of the new Congress are so far marked with great moderation and liberality; and will disappoint the wishes and predictions of many who have opposed the Government. The spirit which characterizes the House of Repˢ, in particular is already extinguishing the honest fears which considered the system as dangerous to republicanism. For myself I am persuaded that the bias of the federal is on the same side with that of the State Goᵗˢ tho' in a much less degree.—*Mad. MSS.*

TO EDMUND RANDOLPH.

N. York May 31, 1789.

My dear friend:

. . . . . .

Our business here goes on very slowly, though in a spirit of moderation and accommodation which is so far flattering. The bill for regulating the quantum of duties is not yet come back from the Senate. Some alterations will be made, but none that affect the substance of the plan, unless it be the abolition of a small favor to the Nations in Alliance with us copied from the laws of Virginia. One of our Senators[1]

[1] Lee.

I will state my reasons why I think it proper to propose amendments, and state the amendments themselves, so far as I think they ought to be proposed. If I thought I could fulfil the duty which I owe to myself and my constituents, to let the subject pass over in silence, I most certainly should not trespass upon the indulgence of this House. But I cannot do this, and am therefore compelled to beg a patient hearing

first is also to be under one head, though to be branched out in such a manner as will check the administration. *Chancellor Livingston wishes this department,*[1] but will *not succeed.* It will be *given I think to Jay or Hamilton.* The *latter is perhaps best qualified* for that *species of business* and *on that account would be preferred* by those *who know him personally.* The *former is more known by character throughout the* U. S.

I have been asked whether *any appointment at home would be agreeable to you.* Being *unacquainted with your mind I have not ventured on an answer.*

The Bill of rates which passed the House of Representatives a few days ago is not yet come down from the Senate. The duties will it is said be pretty much reduced. In a few instances perhaps the reductions may not be improper. If they are not generally left as high as will admit of collection, the dilemma will be unavoidable, of either maintaining our Public credit in its birth, or resorting to other kinds of taxation for which our constituents are not yet prepared. The Senate is also *abolishing*[1] *the discriminations in favor of nations in treaty,* whereby *Britain will be quieted in the enjoyment of our trade as she may please to regulate it* and *France discouraged from her efforts at a competition* which it is not *less our interest than hers to promote.* The *question was agitated* repeatedly *in the house of representatives* and *decided at last almost unanimously in favor of some monitory proof* that *our government is able and not afraid to encounter the restrictions of Britain.* Both *the senators from Virginia particularly Lee go with the majority of the Senate.* In this *I suspect the temper of the party which sent them* is as little *consulted as is the conduct of Lee in the affair of titles* and *his opinion in relation to the western country.*

I have already informed you that *madam Brehan is every day* recovering *from the disesteem & neglect into which reports had thrown her,* and that *Moustier is also become more and more acceptable* or at least *less and less otherwise.* His *commercial ideas are* probably neither *illiberal nor unfriendly to this country.* The contrary has been *supposed.*

[1] Italics are for cypher.

to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. It appears to me that this House is bound

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by every motive of prudence, not to let the first session pass over without proposing to the State Legislatures, some things to be incorporated into the Constitution, that will render it as acceptable to the whole people of the United States, as it has been found acceptable to a majority of them. I wish, among other reasons why something should be done, that

whose ideas on another point excite animadversions among his constituents seems not to consult their sentiments on this. I think myself that it is impolitic, in every view that can be taken of the subject, to put G. Britain at once on the footing of a most favored nation. The bill for collecting the duties is now before the H. of Rep^s^, and I fear will not be very quickly despatched. It has passed thro' several hands legal as well as mercantile, and, notwithstanding is in a crude state. It might certainly have been put into a better; though in every step the difficulties arising from novelty are severely experienced, and are an ample as well as just source of apology. Scarcely a day passes without some striking evidence of the delays and perplexities springing merely from the want of precedents. Time will be a full remedy for this evil; and will I am persuaded, evince a greater facility in legislating uniformly for all the States than has been supposed by some of the best friends of the Union.

Among the subjects on the anvil is the arrangements of the subordinate Executive departments. A Unity in each has been resolved on, and an amenability to the President alone, as well as to the Senate by way of impeachment. Perhaps it would not be very consistent with the Constitution to require the concurrence of the Senate in removals. The Executive power seems to be vested in the President alone, except so far as it is qualified by an express association of the Senate in appointments; in like manner as the Legislative is vested in Congress, under the exception in favour of the President's qualified negative. Independently of this consideration I think it best to give the Senate as little agency as possible in Executive matters, and to make the President as responsible as possible in them. Were the heads of departments dependent on the Senate, a faction in this branch might support them ag^st^ the President, distract the Executive department, and obstruct the public business. The danger of undue power in the President from such a regulation is not to me formidable. I see, and *politically feel* that that will be the weak branch of the Government. With a full power of removal, the President will be more likely to spare unworthy officers, thro' fear than to displace the meritorious thro' caprice or passion.—*Mad. MSS.*

those who had been friendly to the adoption of this Constitution may have the opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government, as those who charged them with wishing the adoption of this Constitution in order to lay the foundation of an aristocracy or despotism. \It will be a desirable thing to extinguish from the bosom of every member of the community, any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired of such a nature as will not injure the Constitution, and they can be ingrafted so as to give satisfaction to the doubting part of our fellow-citizens, the friends of the Federal Government will evince that spirit of deference and concession for which they have hitherto been distinguished.

It cannot be a secret to the gentlemen in this House, that, notwithstanding the ratification of this system of Government by eleven of the thirteen United States, in some cases unanimously, in others by large majorities; yet still there is a great number of our constituents who are dissatisfied with it, among whom are many respectable for their talents and patriotism, and respectable for the jealousy they have for their liberty, which, though mistaken in its object is laudable in its motive. There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and expressly declare the great rights of mankind secured under this Constitution. The acquiescence which our fellow-citizens show under the Government, calls upon us for a like return of moderation. But perhaps there is a stronger motive than this for our going into a consideration of the subject. It is to provide those securities for liberty which are required by a part of the community; I allude

in a particular manner to those two States that have not thought fit to throw themselves into the bosom of the Confederacy. It is a desirable thing, on our part as well as theirs, that a re-union should take place as soon as possible. I have no doubt, if we proceed to take those steps which would be prudent and requisite at this juncture, that in a short time we should see that disposition prevailing in those States which have not come in, that we have seen prevailing in those States which have embraced the Constitution.

But I will candidly acknowledge, that, over and above all these considerations, I do conceive that the Constitution may be amended; that is to say, if all power is subject to abuse, that then it is possible the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done, while no one advantage arising from the exercise of that power shall be damaged or endangered by it. We have in this way something to gain, and, if we proceed with caution, nothing to lose. And in this case it is necessary to proceed with caution; for while we feel all these inducements to go into a revisal of the Constitution, we must feel for the Constitution itself, and make that revisal a moderate one. I should be unwilling to see a door opened for a reconsideration of the whole structure the Government—for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door were opened, we should be very likely to stop at that point which would be safe to the Government itself. But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents: such as would be likely to meet with the concurrence of two-thirds of both Houses, and the approbation of three-fourths of the State Legislatures. I will not propose a single alteration which I do not wish to see take place, as intrinsically proper in itself, or proper because it is wished for by a respectable number of my fellow-citizens; and therefore I shall not propose

a single alteration but is likely to meet the concurrence required by the Constitution. There have been objections of various kinds made against the Constitution. Some were levelled against its structure because the President was without a council; because the Senate, which is a legislative body, had judicial powers in trials on impeachments; and because the powers of that body were compounded in other respects, in a manner that did not correspond with a particular theory; because it grants more power than is supposed to be necessary for every good purpose, and controls the ordinary powers of the State governments. I know some respectable characters who opposed this Government on these grounds; but I believe that the great mass of the people who opposed it, disliked it because it did not contain effectual provisions against the encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow-citizens think these securities necessary.

It is a fortunate thing that the objection to the Government has been made on the ground I stated; because it will be practicable, on that ground, to obviate the objection, so far as to satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the Constitution, which is considered as essential to the existence of the Government by those who promoted its adoption.

The amendments which have occurred to me, proper to be recommended by Congress to the State Legislatures, are these:

First. That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.

Secondly. That in article 1st, section 2, clause 3, these words be struck out, to wit: "The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made;" and that in place thereof be inserted these words, to wit: "After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to ———, after which the proportion shall be so regulated by Congress, that the number shall never be less than ———, nor more than ———, but each State shall, after the first enumeration, have at least two Representatives; and prior thereto."

Thirdly. That in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit: "But no law varying the compensation last ascertained shall operate before the next ensuing election of Representatives."

Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the

best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldiers shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The rights of the people to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

Sixthly. That, in article 3d, section 2, be annexed to the end of clause 2d, these words, to wit:

But no appeal to such court shall be allowed where the value in controversy shall not amount to ——— dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:

The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service, in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same State, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:

The powers delegated by this Constitution are appropriated to the departments to which they are respectively distributed: so that the Legislative Department shall never exercise the powers vested in the Executive or Judicial, nor the Executive exercise the powers vested in the Legislative or Judicial, nor the Judicial exercise the powers vested in the Legislative or Executive Departments.

The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively.

Ninthly. That article 7th be numbered as article 8th.

The first of these amendments relates to what may be called a bill of rights. I will own that I never considered this provision so essential to the Federal Constitution as to make it improper to ratify it, until such an amendment was added; at the same time, I always conceived, that in a certain form, and to a certain extent, such a provision was neither improper nor altogether useless. I am aware that a great number of the most respectable friends to the Government, and champions for republican liberty, have thought such a provision not only unnecessary, but even improper; nay, I believe some have gone so far as to think it even dangerous. Some policy has been made use of, perhaps, by gentlemen on both sides of the question: I acknowledge the ingenuity of those arguments which were drawn against the Constitution, by a comparison with the policy of Great Britain, in establishing a declaration of rights; but there is too great a difference in the case to warrant the comparison: therefore, the arguments drawn from that source were in a great measure inapplicable. In the declaration of rights which that country has established, the truth is, they have gone no farther than to raise a barrier against the power of the Crown; the power of the Legislature is left altogether indefinite. Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, come in question in that body, the invasion of them is resisted by able advocates, yet their Magna Charta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution.

But although the case may be widely different, and it may not be thought necessary to provide limits for the legislative power in that country, yet a different opinion prevails in the

United States. The people of many States have thought it necessary to raise barriers against power in all forms and departments of Government, and I am inclined to believe, if once bills of rights are established in all the States as well as the Federal Constitution, we shall find, that, although some of them are rather unimportant, yet, upon the whole, they will have a salutary tendency. It may be said, in some instances, they do no more than state the perfect equality of mankind. This, to be sure, is an absolute truth, yet it is not absolutely necessary to be inserted at the head of a Constitution.

In some instances they assert those rights which are exercised by the people in forming and establishing a plan of Government. In other instances, they specify those rights which are retained when particular powers are given up to be exercised by the Legislature. In other instances, they specify positive rights, which may seem to result from the nature of the compact. Trial by jury cannot be considered as a natural right, but a right resulting from a social compact, which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature. In other instances, they lay down dogmatic maxims with respect to the construction of the Government; declaring that the Legislative, Executive, and Judicial branches, shall be kept separate and distinct. Perhaps the best way of securing this in practice is, to provide such checks as will prevent the encroachment of the one upon the other.

But, whatever may be the form which the several States have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the Executive power, sometimes against the Legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority.

In our Government it is, perhaps, less necessary to guard against the abuse in the Executive Department than any other; because it is not the stronger branch of the system, but the weaker. It therefore must be levelled against the Legislative, for it is the most powerful, and most likely to be abused, because it is under the least control. Hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted but such declaration is proper. But I confess that I do conceive, that in a Government modified like this of the United States, the great danger lies rather in the abuse of the community than in the Legislative body. The prescriptions in favor of liberty ought to be levelled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is not found in either the Executive or Legislative departments of Government, but in the body of the people, operating by the majority against the minority.

It may be thought that all paper barriers against the power of the community are too weak to be worthy of attention. I am sensible they are not so strong as to satisfy gentlemen of every description who have seen and examined thoroughly the texture of such a defence; yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community, it may be one means to control the majority from those acts to which they might be otherwise inclined.

It has been said, by way of objection to a bill of rights, by many respectable gentlemen out of doors, and I find opposition on the same principles likely to be made by gentlemen on this floor, that they are unnecessary articles of a Republican Government, upon the presumption that the people have those rights in their own hands, and that is the proper place for them to rest. It would be a sufficient answer to say, that this objection lies against such provisions under the State Governments, as well as under the General Government; and there are, I believe, but few gentlemen who are inclined to

push their theory so far as to say that a declaration of rights in those cases is either ineffectual or improper. It has been said, that in the Federal Government they are unnecessary, because the powers are enumerated, and it follows, that all that are not granted by the Constitution are retained; that the Constitution is a bill of powers, the great residuum being the rights of the people; and, therefore, a bill of rights cannot be so necessary as if the residuum was thrown into the hands of the Government. I admit that these arguments are not entirely without foundation; but they are not conclusive to the extent which has been supposed. It is true, the powers of the General Government are circumscribed, they are directed to particular objects; but even if Government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent, in the same manner as the powers of the State Governments under their constitutions may to an indefinite extent; because in the Constitution of the United States, there is a clause granting to Congress the power to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the Government of the United States, or in any department or officer thereof; this enables them to fulfil every purpose for which the Government was established. Now, may not laws be considered necessary and proper by Congress, (for it is for them to judge of the necessity and propriety to accomplish those special purposes which they may have in contemplation,) which laws in themselves are neither necessary nor proper; as well as improper laws could be enacted by the State Legislatures, for fulfilling the more extended objects of those Governments? I will state an instance, which I think in point, and proves that this might be the case. The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose, as well as for some purposes which

it was supposed at the framing of their constitutions the State Governments had in view? If there was reason for restraining the State Governments from exercising this power, there is like reason for restraining the Federal Government.

It may be said, indeed it has been said, that a bill of rights is not necessary, because the establishment of this Government has not repealed those declarations of rights which are added to the several State constitutions; that those rights of the people which had been established by the most solemn act, could not be annihilated by a subsequent act of that people, who meant and declared at the head of the instrument, that they ordained and established a new system, for the express purpose of securing to themselves and posterity the liberties they had gained by an arduous conflict.

I admit the force of this observation, but I do not look upon it to be conclusive. In the first place, it is too uncertain ground to leave this provision upon, if a provision is at all necessary to secure rights so important as many of those I have mentioned are conceived to be, by the public in general, as well as those in particular who opposed the adoption of this Constitution. Besides, some States have no bills of rights, there are others provided with very defective ones, and there are others whose bills of rights are not only defective, but absolutely improper; instead of securing some in the full extent which republican principles would require, they limit them too much to agree with the common ideas of liberty.

It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may

be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution.

It has been said that it is unnecessary to load the Constitution with this provision, because it was not found effectual in the constitution of the particular States. It is true, there are a few particular States in which some of the most valuable articles have not, at one time or other, been violated; but it does not follow but they may have, to a certain degree, a salutary effect against the abuse of power. If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights. Besides this security, there is a great probability that such a declaration in the federal system would be enforced; because the State Legislatures will jealously and closely watch the operations of this Government, and be able to resist with more effect every assumption of power, than any other power on earth can do; and the greatest opponents to a Federal Government admit the State Legislatures to be sure guardians of the people's liberty. I conclude, from this view of the subject, that it will be proper in itself, and highly politic, for the tranquillity of the public mind, and the stability of the Government, that we should offer something, in the form I have proposed, to be incorporated in the system of Government, as a declaration of the rights of the people.

In the next place, I wish to see that part of the Constitution revised which declares that the number of Representatives shall not exceed the proportion of one for every thirty thousand persons, and allows one Representative to every State which rates below that proportion. If we attend to the discussion of this subject, which has taken place in the State conventions, and even in the opinion of the friends to the

Constitution, an alteration here is proper. It is the sense of the people of America, that the number of Representatives ought to be increased, but particularly that it should not be left in the discretion of the Government to diminish them, below that proportion, which certainly is in the power of the Legislature, as the Constitution now stands; and they may, as the population of the country increases, increase the House of Representatives to a very unwieldy degree. I confess I always thought this part of the Constitution defective, though not dangerous; and that it ought to be particularly attended to whenever Congress should go into the consideration of amendments.

There are several minor cases enumerated in my proposition, in which I wish also to see some alteration take place. That article which leaves it in the power of the Legislature to ascertain its own emolument, is one to which I allude. I do not believe this is a power which, in the ordinary course of Government, is likely to be abused. Perhaps of all the powers granted, it is least likely to abuse; but there is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecorum in such power, which leads me to propose a change. We have a guide to this alteration in several of the amendments which the different conventions have proposed. I have gone, therefore, so far as to fix it, that no law varying the compensation, shall operate until there is a change in the Legislature; in which case it cannot be for the particular benefit of those who are concerned in determining the value of the service.

I wish, also, in revising the Constitution, we may throw into that section, which interdicts the abuse of certain powers in the State Legislatures, some other provisions of equal, if not greater importance than those already made. The words, "No State shall pass any bill of attainder, *ex post facto* law," &c., were wise and proper restrictions in the Constitution. I think there is more danger of those powers being

abused by the State Governments than by the Government of the United States. The same may be said of other powers which they possess, if not controlled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should, therefore, wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no State shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every Government should be disarmed of powers which trench upon those particular rights. I know, in some of the State constitutions, the power of the Government is controlled by such a declaration; but others are not. I cannot see any reason against obtaining even a double security on those points; and nothing can give a more sincere proof of the attachment of those who opposed this Constitution to these great and important rights, than to see them join in obtaining the security I have now proposed; because it must be admitted, on all hands, that the State Governments are as liable to attack these invaluable privileges as the General Government is, and therefore ought to be as cautiously guarded against.

I think it will be proper, with respect to the judiciary powers, to satisfy the public mind on those points which I have mentioned. Great inconvenience has been apprehended to suitors from the distance they would be dragged to obtain justice in the Supreme Court of the United States, upon an appeal on an action for a small debt. To remedy this, declare that no appeal shall be made unless the matter in controversy amounts to a particular sum; this, with the regulations respecting jury trials in criminal cases, and suits at common law, it is to be hoped, will quiet and reconcile the minds of the people to that part of the Constitution.

I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the Constitution, that the powers not therein delegated should be reserved to the several States.

Perhaps other words may define this more precisely than the whole of the instrument now does. I admit they may be deemed unnecessary; but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.

These are the points on which I wish to see a revision of the Constitution take place. How far they will accord with the sense of this body, I cannot take upon me absolutely to determine; but I believe every gentleman will readily admit that nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the Government in any one important feature, even in the eyes of its most sanguine admirers. I have proposed nothing that does not appear to me as proper in itself, or eligible as patronised by a respectable number of our fellow-citizens; and if we can make the Constitution better in the opinion of those who are opposed to it, without weakening its frame, or abridging its usefulness in the judgment of those who are attached to it, we act the part of wise and liberal men to make such alterations as shall produce that effect.

Having done what I conceived was my duty, in bringing before this House the subject of amendments, and also stated such as I wish for and approve, and offered the reasons which occurred to me in their support, I shall content myself, for the present, with moving "that a committee be appointed to consider of and report such amendments as ought to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the Constitution of the United States." By agreeing to this motion, the subject may be going on in the committee, while other important business is proceeding to a conclusion in the House. I should advocate greater despatch in the business of amendments, if I were not convinced of the absolute necessity there is of pursuing the organization of the Government; because I think we should obtain the confidence of our fellow-citizens,

in proportion as we fortify the rights of the people against the encroachments of the Government.[1]

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[1] J. M.'s notes for speaking for amend^{ts} by Congress 1789.
Reasons for urging amend^{ts}
1. to prove fed^{ts} friends to liberty.
2. remove remaining inquietudes.
3. bring in N. C. R. Island.
4. to improve the Constitution.

Reasons for moderating the plan.
1. No stop if door opened to theoretic amend^{ts}
2. as likely to make worse as better till tried.
3. insure passage by $\frac{2}{3}$ of Cong^{s} & $\frac{3}{4}$ of Sts:

Object^{ns} of 3 kinds vs. the Const^{n}
1. vs. the theory of its structure.
2. vs. substance of its powers—elections & [illegible].
3. vs. omission of guards in fav^{r} of rights & liberty.

The last most urged & easiest obviated.
Read the amendments—

They relate 1st to private rights—
Bill of Rights—useful not essential—fallacy in both sides, aspects [?] as to English Decl^{n} of Rts—
1. mere act of parl^{t}
2. no freedom of press—Conscience G^{l} Warrants—Hab^{s} Corpus jury in civil causes—crim^{l} attainders—arms to Protest^{s}

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frequent Parl^{ts}—chief trust.
freedom of press & of conscience unknown to Magna Ch^{a}—& Pet: Rts.

Contents of Bill of Rhts.
1. assertion of primitive equality &c.
2. d° of rights exerted in form^{s} of Gov^{ts}
3. *natural rights*. retained as speach [illegible].
4. positive rights result^{g} as trial by jury.
5. Doctrin^{l} artics vs. Dep^{ts} distinct elect^{n}
6. moral precepts for the administr^{n} & nat^{l} character—as justice—œconomy—&c.
Object of Bill Rhts.
To limit & qualify pow^{r} by except^{g} from grant cases in wch it shall not be exercised or ex^{d} in a particular manner.

JUNE 16. POWER OF REMOVAL FROM OFFICE.

If the construction of the Constitution is to be left to its natural course, with respect to the Executive powers of this Government, I own that the insertion of this sentiment [1] in

to guard 1. vs Executive & in Engl. &c—
2. Legislative as in Sts—
3. Majority of people.

ought to point as greatest danger which in Rep: is Prerogative of majority—Here proper, tho' less necessary than in small Repubs

Objectns—vs—Bill of Rhts.
1. in Elective Govts all power in people hence unnecessary & improper—This vs Sts.
2. In fedl. Gov.t all not given retained—Bill of powers—need no Bill of Rhts—
sweeping clause—Genl Warrants &c.
3. St: Bills not repeald

too uncertain

Some Sts have not bills — others defect: — others — injurious [illegible].
4. disparge other rights—or constructively enlarge—

The first goes vs. St: Bills—

both guarded vs. by amendts
5. Not effectl — vs Sts also—but some check.

Courts will aid—also Ex: also Sts Legisls: watch
Time sanctify—incorporate public Sentiment
Bill of Rts ergo *proper.*
II increase of Reps —2 for each St.

III pay of Congs

IV Interdict to Sts as to Conscience—*press*—& jury—

This more necsy to Sts—ys Congs
V Check on appeals—comn law
VI partn as to 3 Depts—& d° as to Genl & St Govts.— *Mad. MSS.*

[1] The first clause of the bill after reciting the title and duties of the Secretary of the Department of Foreign Affairs provided that he was "to be removable from office by the President of the United States."— *Annals of Congress*, i., 455.

law may not be of material importance, though, if it is nothing more than a mere declaration of a clear grant made by the Constitution, it can do no harm; but if it relates to a doubtful part of the Constitution, I suppose an exposition of the Constitution may come with as much propriety from the Legislature, as any other department of the Government. If the power naturally belongs to the Government, and the Constitution is undecided as to the body which is to exercise it, it is likely that it is submitted to the discretion of the Legislature, and the question will depend upon its own merits.

I am clearly of opinion with the gentleman from South Carolina, (Mr. SMITH,) that we ought in this, and every other case, to adhere to the Constitution, so far as it will serve as a guide to us, and that we ought not to be swayed in our decisions by the splendor of the character of the present Chief Magistrate, but to consider it with respect to the merit of men who, in the ordinary course of things, may be supposed to fill the Chair. I believe the power here declared is a high one, and, in some respects, a dangerous one; but, in order to come to a right decision on this point, we must consider both sides of the question: the possible abuses which may spring from the single will of the First Magistrate, and the abuse which may spring from the combined will of the Executive and Senatorial disqualification.

When we consider that the First Magistrate is to be appointed at present by the suffrages of three millions of people, and, in all human probability, in a few years' time by double that number, it is not to be presumed that a vicious or bad character will be selected. If the Government of any country on the face of the earth was ever effectually guarded against the election of ambitious or designing characters to the first office of the State, I think it may with truth be said to be the case under the Constitution of the United States. With all the infirmities incident to a popular election, corrected by the particular mode of conducting it, as directed under the

present system, I think we may fairly calculate that the instances will be very rare in which an unworthy man will receive that mark of the public confidence which is required to designate the President of the United States. Where the people are disposed to give so great an elevation to one of their fellow-citizens, I own that I am not afraid to place my confidence in him, especially when I know he is impeachable for any crime or misdemeanor before the Senate, at all times; and that, at all events, he is impeachable before the community at large every four years, and liable to be displaced if his conduct shall have given umbrage during the time he has been in office. Under these circumstances, although the trust is a high one, and in some degree, perhaps, a dangerous one, I am not sure but it will be safer here than placed where some gentlemen suppose it ought to be.

It is evidently the intention of the Constitution, that the first Magistrate should be responsible for the Executive department; so far therefore as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to his country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate, and has friends in that body, may choose rather to risk his establishment on the favor of that branch, than rest it upon the discharge of his duties to the satisfaction of the Executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate, they may mutually support each other, and for want of efficacy reduce the power of the President to a mere vapor; in which case, his responsibility would be annihilated, and the expectation of it unjust. The high Executive officers, joined in cabal with the Senate, would lay the foundation of discord, and end in an assumption of the Executive power, only to be removed by a revolution in the Government. I believe no principle is more clearly laid down in the Constitution than that of responsibility. After premising this, I will proceed

to an investigation of the merits of the question upon Constitutional ground.

I have, since the subject was last before the House, examined the Constitution with attention, and I acknowledge that it does not perfectly correspond with the ideas I entertained of it from the first glance. I am inclined to think, that a free and systematic interpretation of the plan of Government will leave us less at liberty to abate the responsibility than gentlemen imagine. I have already acknowledged that the powers of the Government must remain as apportioned by the Constitution. But it may be contended, that where the Constitution is silent, it becomes a subject of legislative discretion; perhaps, in the opinion of some, an argument in favor of the clause may be successfully brought forward on this ground: I, however, leave it for the present untouched.

By a strict examination of the Constitution, on what appears to be its true principles, and considering the great departments of the Government in the relation they have to each other, I have my doubts whether we are not absolutely tied down to the construction declared in the bill. In the first section of the first article, it is said, that all Legislative powers herein granted shall be vested in a Congress of the United States. In the second article, it is affirmed that the Executive power shall be vested in a President of the United States of America. In the third article, it is declared that the Judicial power of the United States shall be vested in one Supreme Court, and in such Inferior Courts as Congress may, from time to time, ordain and establish. I suppose it will be readily admitted, that so far as the Constitution has separated the powers of these great departments, it would be improper to combine them together; and so far as it has left any particular department in the entire possession of the powers incident to that department, I conceive we ought not to qualify them further than they are qualified by the Constitution. The Legislative powers are vested in Congress, and are to be exercised by them uncontrolled by any other

department, except the Constitution has qualified it otherwise. The Constitution has qualified the Legislative power, by authorizing the President to object to any act it may pass, requiring, in this case, two-thirds of both Houses to concur in making a law; but still the absolute Legislative power is vested in the Congress with this qualification alone.

The Constitution affirms, that the Executive power shall be vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says, that in appointing to office, the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we a right to extend this exception? I believe not. If the Constitution has invested all Executive power in the President, I venture to assert that the Legislature has no right to diminish or modify his Executive authority.

The question now resolves itself into this, Is the power of displacing an Executive power? I conceive that if any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office, by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his Executive power, to make such appointment? Should we be authorized, in defiance of that clause in the Constitution,—"The Executive power shall be vested in a President," to unite the Senate, with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this, I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an Executive nature as the other; and the first only is authorized by being excepted out of the general rule established by the Constitution, in these words, "the Executive power shall be vested in the President."

The Judicial power is vested in a Supreme Court; but will

gentlemen say the judicial power can be placed elsewhere, unless the Constitution has made an exception? The Constitution justifies the Senate in exercising a judiciary power in determining on impeachments; but can the judicial power be further blended with the powers of that body? They cannot. I therefore say it is incontrovertible, if neither the Legislative nor Judicial powers are subjected to qualifications, other than those demanded in the Constitution, that the Executive powers are equally unabateable as either of the others; and inasmuch as the power of removal is of an Executive nature, and not affected by any Constitutional exception, it is beyond the reach of the Legislative body.

If this is the true construction of this instrument, the clause in the bill is nothing more than explanatory of the meaning of the Constitution, and therefore not liable to any particular objection on that account. If the Constitution is silent, and it is a power the Legislature have a right to confer, it will appear to the world, if we strike out the clause, as if we doubted the propriety of vesting it in the President of the United States. I therefore think it best to retain it in the bill.

JUNE 17. POWER OF REMOVAL FROM OFFICE.

However various the opinions which exist upon the point now before us, it seems agreed on all sides, that it demands a careful investigation and full discussion. I feel the importance of the question, and know that our decision will involve the decision of all similar cases. The decision that is at this time made, will become the permanent exposition of the Constitution; and on a permanent exposition of the Constitution will depend the genius and character of the whole Government. It will depend, perhaps, on this decision, whether the Government shall retain that equilibrium which the Constitution intended, or take a direction towards aristocracy or anarchy among the members of the Government. Hence, how careful ought we to be to give a true direction to a power

so critically circumstanced! It is incumbent on us to weigh with particular attention, the arguments which have been advanced in support of the various opinions with cautious deliberation. I own to you, Mr. Chairman, that I feel great anxiety upon this question; I feel an anxiety, because I am called upon to give a decision in a case that may affect the fundamental principles of the Government under which we act, and liberty itself. But all that I can do on such an occasion is, to weigh well every thing advanced on both sides with the purest desire to find out the true meaning of the Constitution, and to be guided by that, and an attachment to the true spirit of liberty, whose influence I believe strongly predominates here.

Several constructions have been put upon the Constitution relative to the point in question. The gentleman from Connecticut (Mr. SHERMAN) has advanced a doctrine which was not touched upon before. He seems to think (if I understood him rightly) that the power of displacing from office is subject to Legislative discretion; because it having a right to create, it may limit or modify as it thinks proper. I shall not say but at first view this doctrine may seem to have some plausibility. But when I consider that the Constitution clearly intended to maintain a marked distinction between the Legislative, Executive, and Judicial powers of Government; and when I consider, that, if the Legislature has a power, such as is contended for, they may subject and transfer at discretion powers from one department of our Government to another; they may, on that principle, exclude the President altogether from exercising any authority in the removal of officers; they may give it to the Senate alone, or the President and Senate combined; they may vest it in the whole Congress, or they may reserve it to be exercised by this House. When I consider the consequences of this doctrine, and compare them with the true principles of the Constitution, I own that I cannot subscribe to it.

Another doctrine, which has found very respectable friends,

has been particularly advocated by the gentleman from South Carolina, (Mr. SMITH.) It is this: when an officer is appointed by the President and Senate, he can only be displaced for malfeasance in his office by impeachment. I think this would give a stability to the Executive department, so far as it may be described by the heads of departments, which is more incompatible with the genius of republican Governments in general, and this Constitution in particular, than any doctrine which has yet been proposed. The danger to liberty, the danger of mal-administration, has not yet been found to lie so much in the facility of introducing improper persons into office, as in the difficulty of displacing those who are unworthy of the public trust. If it is said that an officer once appointed shall not be displaced without the formality required by impeachment, I shall be glad to know what security we have for the faithful administration of the Government? Every individual, in the long chain which extends from the highest to the lowest link of the Executive Magistracy, would find a security in his situation which would relax his fidelity and promptitude in the discharge of his duty.

The doctrine, however, which seems to stand most in opposition to the principles I contend for, is, that the power to annul an appointment is, in the nature of things, incidental to the power which makes the appointment. I agree that if nothing more was said in the Constitution than that the President, by and with the advice and consent of the Senate, should appoint to office, there would be a great force in saying that the power of removal resulted by a natural implication from the power of appointing. But there is another part of the Constitution, no less explicit than the one on which the gentleman's doctrine is founded; it is that part which declares that the Executive power shall be vested in a President of the United States. The association of the Senate with the President in exercising that particular function, is an exception to this general rule; and exceptions to general rules, I conceive, are ever to be taken strictly. But there is

another part of the Constitution, which inclines, in my judgment, to favor the construction I put upon it; the President is required to take care that the laws be faithfully executed. If the duty to see the laws faithfully executed be required at the hands of the Executive Magistrate, it would seem that it was generally intended he should have that species of power which is necessary to accomplish that end. Now, if the officer when once appointed is not to depend upon the President for his official existence, but upon a distinct body, (for where there are two negatives required, either can prevent the removal,) I confess I do not see how the President can take care that the laws be faithfully executed. It is true, by a circuitous operation he may obtain an impeachment, and even without this it is possible he may obtain the concurrence of the Senate, for the purpose of displacing an officer; but would this give that species of control to the Executive Magistrate which seems to be required by the Constitution? I own, if my opinion was not contrary to that entertained by what I suppose to be the minority on this question, I should be doubtful of being mistaken, when I discovered how inconsistent that construction would make the Constitution with itself. I can hardly bring myself to imagine the wisdom of the convention who framed the Constitution contemplated such incongruity.

There is another maxim which ought to direct us in expounding the Constitution, and is of great importance. It is laid down, in most of the Constitutions or bills of rights in the republics of America; it is to be found in the political writings of the most celebrated civilians, and is every where held as essential to the preservation of liberty, that the three great departments of Government be kept separate and distinct; and if in any case they are blended, it is in order to admit a partial qualification, in order more effectually to guard against an entire consolidation. I think, therefore, when we review the several parts of this Constitution, when it says that the Legislative powers shall be vested in a Con-

gress of the United States, under certain exceptions, and the Executive power vested in the President with certain exceptions, we must suppose they were intended to be kept separate in all cases in which they are not blended, and ought, consequently, to expound the Constitution so as to blend them as little as possible.

Every thing relative to the merits of the question as distinguished from a Constitutional question, seems to turn on the danger of such a power vested in the President alone. But when I consider the checks under which he lies in the exercise of this power, I own to you I feel no apprehensions but what arise from the dangers incidental to the power itself; for dangers will be incidental to it, vest it where you please. I will not reiterate what was said before with respect to the mode of election, and the extreme improbability that any citizen will be selected from the mass of citizens who is not highly distinguished by his abilities and worth; in this alone we have no small security for the faithful exercise of this power. But, throwing that out of the question, let us consider the restraints he will feel after he is placed in that elevated station. It is to be remarked, that the power in this case will not consist so much in continuing a bad man in office, as in the danger of displacing a good one. Perhaps the great danger, as has been observed, of abuse in the Executive power, lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this; for if an unworthy man be continued in office by an unworthy President, the House of Representatives can at any time impeach him, and the Senate can remove him, whether the President chooses or not. The danger then consists merely in this: the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power, and the restraints that operate to prevent it? In the first place, he will be impeachable by this House, before the Senate for such an act of mal-administra-

tion; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust. But what can be his motives for displacing a worthy man? It must be that he may fill the place with an unworthy creature of his own. Can he accomplish this end? No; he can place no man in the vacancy whom the Senate shall not approve; and if he could fill the vacancy with the man he might choose, I am sure he would have little inducement to make an improper removal. Let us consider the consequences. The injured man will be supported by the popular opinion; the community will take side with him against the President; it will facilitate those combinations, and give success to those exertions which will be pursued to prevent his re-election. To displace a man of high merit, and who from his station may be supposed a man of extensive influence are considerations in the mind of any man who may fill the Presidential chair. The friends of those individuals and the public sympathy will be against him. If this should not produce his impeachment before the Senate, it will amount to an impeachment before the community, who will have the power of punishment, by refusing to re-elect him. But suppose this persecuted individual cannot obtain revenge in this mode; there are other modes in which he could make the situation of the President very inconvenient, if you suppose him resolutely bent on executing the dictates of resentment. If he had not influence enough to direct the vengeance of the whole community, he may probably be able to obtain an appointment in one or the other branch of the Legislature; and being a man of weight, talents, and influence, in either case he may prove to the President troublesome indeed. We have seen examples in the history of other nations, which justify the remark I now have made. Though the prerogatives of the British King are great as his rank, and it is unquestionably known that he has a positive influence over both branches of the legislative body, yet there have been examples in which the appointment and removal of

ministers have been found to be dictated by one or other of those branches. Now if this be the case with an hereditary Monarch, possessed of those high prerogatives and furnished with so many means of influence; can we suppose a President, elected for four years only, dependent upon the popular voice, impeachable by the Legislature, little, if at all, distinguished for wealth, personal talents, or influence from the head of the department himself; I say, will he bid defiance to all these considerations, and wantonly dismiss a meritorious and virtuous officer? Such abuse of power exceeds my conception. If any thing takes place in the ordinary course of business of this kind, my imagination cannot extend to it on any rational principle. But let us not consider the question on one side only; there are dangers to be contemplated on the other. Vest this power in the Senate jointly with the President, and you abolish at once that great principle of unity and responsibility in the Executive department, which was intended for the security of liberty and the public good. If the President should possess alone the power of removal from office, those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community. The chain of dependence therefore terminates in the supreme body, namely, in the people, who will possess, besides, in aid of their original power, the decisive engine of impeachment. Take the other supposition; that the power should be vested in the Senate, on the principle that the power to displace is necessarily connected with the power to appoint. It is declared by the Constitution, that we may by law vest the appointment of inferior officers in the heads of departments; the power of removal being incidental, as stated by some gentlemen. Where does this terminate? If you begin with the subordinate officers, they are dependent on their superior, he on the next superior, and he on — whom? On the Senate, a

permanent body; a body, by its particular mode of election, in reality existing forever; a body possessing that proportion of aristocratic power which the Constitution no doubt thought wise to be established in the system, but which some have strongly excepted against. And let me ask gentlemen, is there equal security in this case as in the other? Shall we trust the Senate, responsible to individual Legislatures, rather than the person who is responsible to the whole community? It is true, the Senate do not hold their offices for life, like aristocracies recorded in the historic page; yet the fact is, they will not possess that responsibility for the exercise of Executive powers which would render it safe for us to vest such powers in them. But what an aspect will this give to the Executive. Instead of keeping the departments of Government distinct, you make an Executive out of one branch of the Legislature; you make the Executive a two-headed monster, to use the expression of the gentleman from New Hampshire, (Mr. LIVERMORE,) you destroy the great principle of responsibility, and perhaps have the creature divided in its will, defeating the very purposes for which a unity in the Executive was instituted. These objections do not lie against such an arrangement as the bill establishes. I conceive that the President is sufficiently accountable to the community; and if this power is vested in him, it will be vested where its nature requires it should be vested; if anything in its nature is executive, it must be that power which is employed in superintending and seeing that the laws are faithfully executed. The laws cannot be executed but by officers appointed for that purpose; therefore, those who are over such officers naturally possess the Executive power. If any other doctrine be admitted, what is the consequence? You may set the Senate at the head of the Executive department, or you may require that the officers hold their places during the pleasure of this branch of the Legislature, if you cannot go so far as to say we shall appoint them; and by this means, you link together two branches of the Government

which the preservation of liberty requires to be constantly separated.

Another species of argument has been urged against this clause. It is said, that it is improper, or at least unnecessary, to come to any decision on this subject. It has been said by one gentleman, that it would be officious in this branch of the Legislature to expound the Constitution, so far as it relates to the division of power between the President and Senate; it is incontrovertibly of as much importance to this branch of the Government as to any other, that the Constitution should be preserved entire. It is our duty, so far as it depends upon us, to take care that the powers of the Constitution be preserved entire to every department of Government; the breach of the Constitution in one point, will facilitate the breach in another; a breach in this point may destroy that equilibrium by which the House retains its consequence and share of power; therefore we are not chargeable with an officious interference. Besides, the bill, before it can have effect, must be submitted to both those branches who are particularly interested in it; the Senate may negative, or the President may object, if he thinks it unconstitutional.

But the great objection drawn from the source to which the last arguments would lead us is, that the Legislature itself has no right to expound the Constitution; that wherever its meaning is doubtful, you must leave it to take its course, until the Judiciary is called upon to declare its meaning. I acknowledge, in the ordinary course of Government, that the exposition of the laws and Constitution devolves upon the Judiciary. But I beg to know, upon what principle it can be contended, that any one department draws from the Constitution greater powers than another, in marking out the limits of the powers of the several departments? The Constitution is the charter of the people to the Government; it specifies certain great powers as absolutely granted, and marks out the departments to exercise them. If the

Constitutional boundary of either be brought into question, I do not see that any one of these independent departments has more right than another to declare their sentiments on that point.

Perhaps this is an omitted case. There is not one Government on the face of the earth, so far as I recollect, there is not one in the United States, in which provision is made for a particular authority to determine the limits of the Constitutional division of power between the branches of the Government. In all systems there are points which must be adjusted by the departments themselves, to which no one of them is competent. If it cannot be determined in this way, there is no resource left but the will of the community, to be collected in some mode to be provided by the Constitution, or one dictated by the necessity of the case. It is therefore a fair question, whether this great point may not as well be decided, at least by the whole Legislature as by a part, by us as well as by the Executive or Judiciary? As I think it will be equally Constitutional, I cannot imagine it will be less safe, that the exposition should issue from the Legislative authority than any other; and the more so, because it involves in the decision the opinions of both those departments, whose powers are supposed to be affected by it. Besides, I do not see in what way this question could come before the judges, to obtain a fair and solemn decision; but even if it were the case that it could, I should suppose, at least while the Government is not led by passion, disturbed by faction, or deceived by any discolored medium of sight, but while there is a desire in all to see and be guided by the benignant ray of truth, that the decision may be made with the most advantage by the Legislature itself.

My conclusion from these reflections is, that it will be Constitutional to retain the clause; that it expresses the meaning of the Constitution as must be established by fair construction, and a construction which, upon the whole, not only consists with liberty, but is more favorable

to it than any one of the interpretations that have been proposed.[1]

JUNE 18. POWER OF REMOVAL FROM OFFICE.

The question now seems to be brought to this, whether it is proper or improper to retain these words in the clause, provided they are explanatory of the Constitution. I think this branch of the Legislature is as much interested in the establishment of the true meaning of the Constitution, as either the President or Senate; and when the Constitution submits

[1] TO EDMUND PENDLETON.

N. York June 21, 1789.

Dear Sir,—

. . . . The papers now covered contain a sketch of a very interesting discussion which consumed great part of the past week. The Constitution has omitted to declare expressly by what authority removals from office are to be made. Out of this silence four constructive doctrines have arisen. 1. that the power of removal may be disposed of by the Legislative discretion. To this it is objected that the Legislature might then confer it on themselves, or even on the House of Repˢ, which could not possibly have been intended by the Constitution. 2. that the power of removal can only be exercised in the mode of impeachment. To this the objection is that it would make officers of every description hold their places during good behavior, which could have still less been intended. 3. that the power of removal is incident to the power of appointment. To this the objections are that it would require the constant Session of the Senate, that it extends the mixture of Legislative & Executive power, that it destroys the responsibility of the President by enabling a subordinate Executive officer to intrench himself behind a party in the Senate, and destroys the utility of the Senate in their Legislative and Judicial characters, by involving them too much in the heats and cabals inseparable from questions of a personal nature; in fine, that it transfers the trust in fact from the President who being at all times impeachable as well as every 4th year eligible by the people at large, may be deemed the most responsible member of the Government, to the Senate who from the nature of that institution, is and was meant after the Judiciary & in some respects without that exception to be the most irresponsible branch of the Government. 4. that the Executive power being in general terms vested in the President,

it to us to establish offices by law, we ought to know by what tenure the office should be held; and whether it should depend upon the concurrence of the Senate with the President, or upon the will of the President alone; because gentlemen may hesitate in either case, whether they will make it for an indefinite or precise time. If the officer can be removed at discretion by the President, there may be safety in letting it be for an indefinite period. If he cannot exert his prerogative, there is no security even by the mode of impeachment; because the officer may intrench himself behind the authority

all power of an Executive nature, not particularly taken away must belong to that department, that the power of appointment: only being expressly taken away, the power of Removal, so far as it is of an Executive nature must be reserved. In support of this construction it is urged that exceptions to general positions are to be taken strictly, and that the axiom relating to the separation of the Legislative & Executive functions ought to be favored. To this are objected the principle on which the 3d construction is founded, & the danger of creating too much influence in the Executive Magistrate.

The last opinion has prevailed, but is subject to various modifications, by the power of the Legislature to limit the duration of laws creating offices, or the duration of the appointments for filling them, and by the power over the salaries and appropriations. In truth, the Legislative power is of such a nature that it scarcely can be restrained either by the Constitution or by itself. And if the federal Government should lose its proper equilibrium within itself, I am persuaded that the effect will proceed from the Encroachments of the Legislative department. If the possibility of encroachments on the part of the Ex or the Senate were to be compared, I should pronounce the danger to lie rather in the latter than the former. The mixture of Legislative, Executive & Judiciary authorities, lodged in that body, justifies such an inference; At the same [time], I am fully in the opinion that the numerous and immediate representatives of the people, composing the other House, will decidedly predominate in the Government.

Mr. Page tells me he has forwarded to you a copy of the amendments lately submitted to the H. of Repr. They are restrained to points on which least difficulty was apprehended. Nothing of a controvertible nature ought to be hazarded by those who are sincere in wishing for the approbation of ⅔ of each House, and ¾ of the State Legislatures.—*Mad. MSS.*

of the Senate, and bid defiance to every other department of Government. In this case, the question of duration would take a different turn. Hence it is highly proper that we and our constituents should know the tenure of the office. And have we not as good a right as any branch of the Government to declare our sense of the meaning of the Constitution?

Nothing has yet been offered to invalidate the doctrine, that the meaning of the Constitution may as well be ascertained by the legislative as by the judicial authority. When the question emerges as it does in this bill, and much seems to depend upon it, I should conceive it highly proper to make a legislative construction. In another point of view it is proper that this interpretation should now take place, rather than at a time when the exigency of the case may require the exercise of the power of removal. At present, the disposition of every gentleman is to seek the truth, and abide by its guidance when it is discovered. I have reason to believe the same disposition prevails in the Senate. But will this be the case when some individual officer of high rank draws into question the capacity of the President, with the Senate, to effect his removal? If we leave the Constitution to take this course, it can never be expounded until the President shall think it expedient to exercise the right of removal, if he supposes he has it; then the Senate may be induced to set up their pretensions. And will they decide so calmly as at this time, when no important officer in any of the great departments is appointed to influence their judgments? The imagination of no member here, or of the Senate, or of the President himself, is heated or disturbed by faction. If ever a proper moment for decision should offer, it must be one like the present.

I do not conceive that this question has been truly stated by some gentlemen. In my opinion it is not whether we shall take the power from one branch of the Government and give it to another; but the question is, to which branch has the Constitution given it? Some gentlemen have said, that it

resides in the people at large; and that if it is necessary to the Government, we must apply to the people for it, and obtain it by way of amendment to the Constitution. Some gentlemen contend, that although it is given in the Constitution, as a necessary power to carry into execution the other powers vested by the Constitution, yet it is vested in the Legislature. I cannot admit this doctrine either; because it is setting the Legislature at the head of the Executive branch of the Government. If we take the other construction of the gentleman from South Carolina, that all officers hold their places by the firm tenure of good behaviour, we shall find it still more improper. I think gentlemen will see, upon reflection, that this doctrine is incompatible with the principles of free Government. If there is no removability but by way of impeachment, then all the Executive officers of Government hold their offices by the firm tenure of good behaviour, from the Chief Justice down to the tide waiter.

[Mr. SMITH interrupted Mr. M., and said that he had admitted that inferior officers might be removed, because the Constitution had left it in the power of the Legislature to establish them on what terms they pleased; consequently, to direct their appointment and removal.]

Mr. MADISON had understood the gentleman as he now explained himself. But still he contended, that the consequences he had drawn would necessarily follow; because there was no express authority given to the Legislature in the Constitution to enable the President, the courts of law, or heads of the departments, to remove an inferior officer; all that was said on that head was confined solely to the power of appointing them. If the gentleman admits that the Legislature may vest the power of removal, with respect to inferior officers, he must also admit that the Constitution vests the President with the power of removal in the case of superior officers; because both powers are implied in the same words. The President may appoint the one class, and the Legislature may authorize the courts of law or heads of departments to

appoint in the other case. If then it is admitted that the power of removal vests in the President, or President and Senate, the arguments which I urged yesterday, and those which have been urged by honorable gentlemen on this side of the question for these three days past, will fully evince the truth of the construction which we give, that the power is in the President alone. I will not repeat them, because they must have full possession of every gentleman's mind. I am willing, therefore, to rest the decision here; and hope that it will be made in such a manner as to perpetuate the blessings which this Constitution was intended to embrace.[1]

[1] TO SAMUEL JOHNSTON.

NEW YORK, June 21, 1789.

DEAR SIR.

I lost no time in handing to the President the address inclosed in your favor of the 22 of May, and have postponed an acknowledgement of the latter in expectation of being able at the same time to cover the President's answer. This has been and continues to be delayed by a very serious indisposition, we hope he is not in much danger, but are by no means without our fears also. His disorders commenced in a fever which has greatly reduced him, and is terminating in a very large tumor which, unless it degenerate itself into a dangerous malady, will probably be remedial.

In the enclosed paper is a copy of a late proposition in Congress on the subject of amending the Constitution. It aims at the two-fold object of removing the fears of the discontented and of avoiding all such alterations as would either displease the adverse side, or endanger the success of the measure. I need not remark to you the hazard of attempting anything of a controvertible nature which is to depend on the concurrence of ⅔ of both Houses here, and the ratification of ¾ of the State Legislatures. It will be some time before the proposed amendments will become a subject of discussion in Congress. The bills relating to revenue, and the organization of the Judiciary and Executive Departments, being likely to remain for some time on hand. This delay proceeds from the intricacy and partly from the novelty of the business. At every step difficulties from one or another of these sources arrest our progress. After the first essays the work will become every day more easy.

Among other difficulties, the exposition of the Constitution is frequently a Copious Source, and must continue so untill its meaning on

JUNE 22. POWER OF REMOVAL FROM OFFICE.

I am in favor of the motion for striking out, but not upon the principles of my worthy colleague.[1] I will briefly state my reasons for voting in the manner I intend. First, altering the mode of expression tends to give satisfaction to those gentlemen who think it not an object of legislative discretion; and second, because the amendment already agreed to fully contains the sense of this House upon the doctrine of the Constitution; and therefore the words are unnecessary as they stand here. I will not trouble the House with repeating reasons why the change of expression is best, as they are well understood. But gentlemen cannot fairly urge against us a change of ground, because the point we contended for is fully obtained by the amendment. It was truly said by the gentleman from New York, (Mr. BENSON,) that these words

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all great points shall have been settled by precedents. The greatest part of the week past has been consumed in deciding a question as to the power of removal from offices held during pleasure. Four Constructive doctrines have been maintained 1, that the power is subject to the disposal of the Legislature. 2 that no removal can take place otherwise than by impeachment. 3 that the power is incident to that of appointment and therefore belongs to the President & Senate. 4 that the Executive power being generally vested in the President every power of an Executive Nature, not expressly excepted is to be referred thither, and consequently the power of removal, the power of appointment only being taken away.

In support of each of these constructions the Argumenta ab inconvenientibus have been elaborately dealt out against the others. The decision in a Committee of the whole on the Office of Foreign Affairs has adopted the 4th opinion as most consonant to the frame of the Constitution, to the policy of mixing the Legislature & Executive honors as little as possible, and to the responsibility necessary in the head of the Executive Department.

(Papers of Gov. Samuel Johnston of North Carolina.—V. *C. Historical and Genealogical Register*, vii., 105.)

[1] The bill containing in the second section an expression of the right of removal, passed the House June 27, and was finally passed by both Houses July 20.

carry with them an implication that the Legislature has the power of granting the power of removal.

It is needless to assign my reasons why I think the Legislature not in possession of this power; they were fully explained before. I therefore shall only say, if there is a principle in our Constitution, indeed in any free Constitution, more sacred than another, it is that which separates the Legislative, Executive, and Judicial powers. If there is any point in which the separation of the Legislative and Executive powers ought to be maintained with greater caution, it is that which relates to officers and offices. The powers relative to offices are partly Legislative and partly Executive. The Legislature creates the office, defines the powers, limits its duration, and annexes a compensation. This done, the Legislative power ceases. They ought to have nothing to do with designating the man to fill the office. That I conceive to be of an Executive nature. Although it be qualified in the Constitution, I would not extend or strain that qualification beyond the limits precisely fixed for it. We ought always to consider the Constitution with an eye to the principles upon which it was founded. In this point of view, we shall readily conclude that if the Legislature determines the powers, the honors, and emoluments of an office, we should be insecure if they were to designate the officer also. The nature of things restrains and confines the Legislative and Executive authorities in this respect; and hence it is that the Constitution stipulates for the independence of each branch of the Government.

Let it be understood that the Legislature is to have some influence both in appointing and removing officers, and I venture to say the people of America will justly fear a system of sinecures. What security have they that offices will not be created to accommodate favorites or pensioners subservient to their designs? I never did conceive, that so far as the Constitution gave one branch of the Legislature an agency in this business, it was, by any means, one of its most meritorious

parts; but so far as it has gone, I confess I would be as unwilling to abridge the power of that body as to enlarge it. But considering, as I do, that the Constitution fairly vests the President with the power, and that the amendment declares this to be the sense of the House, I shall concur with the gentlemen in opposition so far as to strike out these words, which I now look upon to be useless.

I have a great respect for the abilities and judgment of my worthy colleague, (Mr. PAGE,) and am convinced he is inspired by the purest motives in his opposition to what he conceives to be an improper measure; but I hope he will not think so strange of our difference, if he considers the small proportion of the House which concurs with him with respect to impeachment being the only way of removing officers. I believe the opinion is held but by one gentleman besides himself. If this sentiment were to obtain, it would give rise to more objections to the Constitution than gentlemen are aware of; more than any other construction whatever. Yet while he professes to be greatly alarmed on one account, he possesses a stoic apathy with respect to the other.

JUNE 29. DUTIES OF THE COMPTROLLER.

Mr. MADISON observed, that the committee had gone through the bill without making any provision respecting the tenure by which the Comptroller is to hold his office. He thought it was a point worthy of consideration, and would, therefore, submit a few observations upon it.

It will be necessary, said he, to consider the nature of this office, to enable us to come to a right decision on the subject; in analyzing its properties, we shall easily discover they are not purely of an Executive nature. It seems to me that they partake of a Judiciary quality as well as Executive; perhaps the latter obtains in the greatest degree. The principal duty seems to be deciding upon the lawfulness and justice of the claims and accounts subsisting between the United States and

particular citizens: this partakes strongly of the judicial character, and there may be strong reasons why an officer of this kind should not hold his office at the pleasure of the Executive branch of the Government. I am inclined to think that we ought to consider him something in the light of an arbitrator between the public and individuals, and that he ought to hold his office by such a tenure as will make him responsible to the public generally; then again it may be thought, on the other side, that some persons ought to be authorized on behalf of the individual, with the usual liberty of referring to a third person, in case of disagreement, which may throw some embarrassment in the way of the first idea.

Whatever, Mr. Chairman, may be my opinion with respect to the tenure by which an Executive officer may hold his office according to the meaning of the Constitution, I am very well satisfied, that a modification by the Legislature may take place in such as partake of the judicial qualities, and that the legislative power is sufficient to establish this office on such a footing as to answer the purposes for which it is prescribed.

With this view he would move a proposition, to be inserted in the bill; it was that the Comptroller should hold his office during ———— years, unless sooner removed by the President: he will always be dependent upon the Legislature, by reason of the power of impeachment; but he might be made still more so, when the House took up the Salary bill. He would have the person re-appointable at the expiration of the term, unless he was disqualified by a conviction on an impeachment before the Senate; by this means the Comptroller would be dependent upon the President, because he can be removed by him; he will be dependent upon the Senate, because they must consent to his election for every term of years; and he will be dependent upon this House, through the means of impeachment, and the power we shall reserve over his salary; by which means we shall effectually secure the dependence of this officer upon the Government. But

making him thus thoroughly dependent, would make it necessary to secure his impartiality, with respect to the individual. This might be effected by giving any person, who conceived himself aggrieved, a right to petition the Supreme Court for redress, and they should be empowered to do right therein; this will enable the individual to carry his claim before an independent tribunal.

A provision of this kind exists in two of the United States at this time, and is found to answer a very good purpose. He mentioned this, that gentlemen might not think it altogether novel. The committee, he hoped, would take a little time to examine the idea.[1]

AUGUST 13. AMENDMENTS TO THE CONSTITUTION.

Mr. MADISON did not think it was an improper time to proceed in this business; the House had already gone through

[1] TO EDMUND PENDLETON.

N. YORK, July 15, 1789.

DEAR SIR—

I am particularly obliged by your favor of the 3d, which incloses your remarks on the Judiciary bill. It came to hand yesterday only, and I have not had time to compare your suggestions with the plan of the Senate: nor do I know the alterations which may have taken place in it since it has been under discussion. In many points, even supposing the outline a good one, which I have always viewed as controvertible, defects and inaccuracies were striking.

It gives me much pleasure to find your approbation given to the decision of the House of Rep^{s} on the power of removal. This appears to be the case with several of our friends in Virg^{a} of whose sentiments I had formed other conjectures. I was apprehensive that the alarms with regard to the danger of monarchy, would have diverted their attention from the impropriety of transferring an Executive trust from the most to the least responsible member of the Government. Independently of every other consideration, the primary objects on which the Senate are to be employed, seem to require that their executive agency should not be extended beyond the minimum that will suffice. As the Judiciary tribunal which is to decide on impeachments, they ought not to be called on previously, for a summary opinion on cases which may come before them in another capacity. And both on that

with subjects of a less interesting nature; now if the Judiciary bill was of such vast importance, its consideration ought not to have been postponed for those purposes.

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account, and the necessity of keeping them in a fit temper to controul the capricious & factious counsels of the other Legislative branch, they ought to be as little as possible involved in those questions of a personal nature, which in all Governments are the most frequent & violent causes of animosity and party. . . .—*Mad. MSS.*

TO JAMES MONROE

N. Y., Aug. 9, 1789.

DEAR SIR—

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Your ideas on the proposed discrimination between foreign Nations coincide I perceive exactly with those which have governed me. The Senate did not allow that no effort should be made for vindicating our commercial interests, but argued that a more effectual mode should be substituted. A Com^e^ was app^d^ in that branch to report such a mode. The report made is founded on something like a retort of her restrictions in the W. Ind^a^ channels. It is now said that as the measure would involve an imposition of extraordinary duties, the Senate cannot proceed in it. Mr. Gerry alluding to these circumstances moved two days ago for a bill giving further encouragement to trade & navigation, and obtained a Committee for the purpose. What will be the result is uncertain. If the attempt added to what has passed should as it probably will, be made known abroad, it may lead to apprehensions that may be salutary.

The attention of the H. of Rep^s^ for some days has been confined to the subject of compensations. The bill is at length brought into its final shape. Much discussion took place on the quantum for the members of Cong^s^, & the question whether it sh^d^ be the same for both Houses. My own opinion was in favor of a difference founded on a reduction of the sum proposed with regard to the H. of Rep^s^ & an augmentation as to the Senate. As no difference took place, the case of the Senate and of the members from S. C. & Georg^a^ had real weight ag^st^ a lesser sum than 6 doll^rs^, which I own is higher than I had contemplated for the H. of Rep^s^, & which I fear may excite criticisms not to be desired at the present moment.

Yesterday was spent on a Message from the President relative to Indian Affairs & the Militia Bills are ordered providing for a Treaty with the Hostile tribes, and for regulating the Militia. The latter is an arduous task & will probably not be compleated at this Session.—*Mad. MSS.*

He would remind gentlemen that there were many who conceived amendments of some kind necessary and proper in themselves; while others who are not so well satisfied of the necessity and propriety, may think they are rendered expedient from some other consideration. Is it desirable to keep up a division among the people of the United States on a point in which they consider their most essential rights are concerned? If this is an object worthy the attention of such a numerous part of our constituents, why should we decline taking it into our consideration, and thereby promote that spirit of urbanity and unanimity which the Government itself stands in need of for its more full support?

Already has the subject been delayed much longer than could have been wished. If after having fixed a day for taking it into consideration, we should put it off again, a spirit of jealousy may be excited, and not allayed without great inconvenience.

Form, sir, is always of less importance than the substance; but on this occasion I admit that form is of some consequence, and it will be well for the House to pursue that which, upon reflection, shall appear to be the most eligible. Now it appears to me, that there is a neatness and propriety in incorporating the amendments into the Constitution itself; in that case, the system will remain uniform and entire; it will certainly be more simple when the amendments are interwoven into those parts to which they naturally belong, than it will if they consist of separate and distinct parts. We shall then be able to determine its meaning without references or comparison; whereas, if they are supplementary, its meaning can only be ascertained by a comparison of the two instruments, which will be a very considerable embarrassment. It will be difficult to ascertain to what parts of the instrument the amendments particularly refer; they will create unfavorable comparisons; whereas, if they are placed upon the footing

here proposed, they will stand upon as good foundation as the original work. Nor is it so uncommon a thing as gentlemen suppose; systematic men frequently take up the whole law, and, with its amendments and alterations, reduce it into one act. I am not, however, very solicitous about the form, provided the business is but well completed.[1]

[1] Madison wrote to Archibald Stuart, August 12:

"I am just favd with yours of the 30th inst: and am glad to find your sentiments so decided as to the power of removal by the Presidt. Every letter to me and as far as I know to others here from Virga. ratifies the propriety of the decision of Congress. Our last discussions of moment have turned on the compensations. The bill as gone to the Senate allows six dollars a day to the members of both houses. My own idea was that it should have been less for the Reps & more for the Senate. With equal emoluments the ablest men will prefer the H. of Reps and the Senate will degenerate into an unfitness for the great dignity of its institution. The rate allowed is unpopular in this quarter of the Union. But the truth is that 6 dollars [is more necessary] for the distant states particularly S. C. & Georgia than it would be to N. Jersey, Connecticut, &c, and a defective allowance would put the states at a distance under disadvantages of a very serious nature. Add to this that a less sum than 6 dollars for the Senate (whose case was involved in that of the H. of Reps after the vote agst a discrimination) could not well be thought of. On these grounds the measure must rest for its vindication. I am afraid it will be disrelished in your part of Virga & cannot say I am satisfied with it myself. With men of liberal turns and who know the former allowance made to Congress by the States and who moreover take into view the situation & voting of the different states, an apologetic reasoning on the subject will not be sufficient, with those of another cast, the case will be different . . ."—*Va. Hist. Soc. MSS.*

TO EDMUND RANDOLPH

N. Y., Aug. 21, 89.

My Dear friend,—

For a week past the subject of amendts has exclusively occupied the H. of Reps Its progress has been exceedingly wearisome not only on account of the diversity of opinions that was to be apprehended, but of the apparent views of some to defeat by delaying a plan short of their wishes, but likely to satisfy a great part of their companions in opposition throughout the Union. It has been absolutely necessary in order to effect anything, to abbreviate debate, and exclude every

SEPTEMBER 3. LOCATION OF THE CAPITAL.

Mr. MADISON meant to pay due attention to every argument that could be urged on this important question. Facts had been asserted, the impressions of which he wished to be erased, if they were not well founded. It has been said, that the communication with the Western Territory, by the Sus-

proposition of a doubtful & unimportant nature. Had it been my wish to have comprehended every amend^{t}. recomended by Virg^{a}., I should have acted from prudence the very part to which I have been led by choice. Two or three contentious additions would even now prostrate the whole project.

The Judiciary bill was put off in fav^{r}. of the preceding subject. It was evident that a longer delay of that w^{d} prevent any decision on it at this Session. A push was therefore made, which did not succeed without strenuous opposition. On monday the bill will probably be taken up & be pursued to a final question as fast as the nature of the case will allow.

I find on looking over the notes of your introductory discourse in the Convention at Philad^{a}., that it is not possible for me to do justice to the substance of it. I am anxious for particular reasons to be furnished with the means of preserving this as well as the other arguments in that body, and must beg that you will make out & forward me the scope of your reasoning. You have your notes I know & from these you can easily deduce the argument on a condensed plan. I make this request with an earnestness wch will not permit you either to refuse or delay a compliance.—*Mad. MSS.*

TO ALEXANDER WHITE

N. YORK Aug. 24—1789,

DEAR SIR

The week past has been devoted to the subject of amendments: all that remains is a formal vote on a fair transcript which will be taken this morning; and without debate I hope, as each of the propositions has been agreed to by two thirds of the House. The substance of the report of the Committee of eleven has not been much varied. It became an unavoidable sacrifice to *a few* who knew their concurrence to be necessary, to the dispatch if not the success of the business, to give up the form by which the amend^{ts} when ratified would have fallen into the body of the Constitution, in favor of the project of adding them by way of appendix to it. It is already apparent I think that some ambiguities will be produced by this change, as the

quehanna, is more convenient than by the Potomac. I apprehend this is not the case; and the propriety of our decision will depend, in a great measure, on the superior advantages of one of these two streams. It is agreed, on all hands, that we ought to have some regard to the convenience of the Atlantic navigation. Now, to embrace this object, a position must be taken on some navigable river; to favor the communication with the Western Territory, its arms ought like-

question will often arise and sometimes be not easily solved, how far the original text is or is not necessarily superceded, by the supplemental act. A middle way will be taken between the two modes, of proposing all the amendts as a single act to be adopted or rejected in the gross, and of proposing them as independent amendts each of which shall take place or not, as it may be individually decided on. The several propositions will be *classed* according to their affinity to each other, which will reduce them to the number of 5 or 6 in the whole, to go forth as so many amendts unconnected with one another.

On Saturday notice was given to the House by Mr Scott that on Thursday in this week he should bring in the subject of the *permanent seat* of Congress. [Illegible] & [illegible] in favr of Trenton ensued. The like from Lancaster &c. also came forward. I suspect that the motion is the result of some [illegible] of a pretty serious nature. A great push will be made for Trenton which has I fear more partizans than might be wished. It is surmised that a coalition has taken place between Pa & the East: states. I believe it to be the case in some degree, tho' not fully. As far as I can gather, the coalition for Trenton might be broken, by accepting the Susquehannah, and leaving N. Y. the temporary enjoyment of Congs. This I believe is the ultimate [aim] of the N. Y. party, and will not do for us.

I suspect they begin to despair of a long possession of Congs and consequently mix the permanent with the temporary considerations. Having given you these facts your own judgment will best decide how far it may be worth while and incumbent on you to hasten your return.—*N. Y. Pub. Lib.* (*Lenox*) *MSS.*

Alexander White wrote from Philadelphia August 9, 1789, saying those people he had seen "Shew almost a childish anxiety for the removal of Congress to this place, and pretend to count votes by States and by Poll, treat the Idea of fixing the permanent Seat of Government on Patowmack within a Century to come as too ridiculous to merit Consideration, resting assured that whenever the Question is put, Delaware will be the place."—*Mad. MSS.*

wise to extend themselves towards that region. I did not suppose it would have been necessary to bring forward charts and maps, as has been done by others, to show the committee the comparative situation of those rivers. I flattered myself it was sufficiently understood, to enable us to decide the question of superiority; but I am now inclined to believe, that gentlemen have embraced an error, and I hope they are not determined to vote under improper impressions. I venture to pledge myself for the demonstration, that the communication with the Western Territory, by the Potomac, is more certain and convenient than the other. And if the question is as important as it is admitted to be, gentlemen will not shut their ears to information; they will not precipitate the decision; or if they regard the satisfaction of our constituents, they will allow them to be informed of all the facts and arguments that lead to the decision of a question in which the general and particular interests of all parts of the Union are involved.[1]

[1] TO EDMUND PENDLETON.

N. Y., Sep[r] 14, 89.

DEAR SIR,—I was fav[d] on saturday with yours of the 2d instant. The Judiciary is now under consideration. I view it as you do, as defective both in its general structure, and many of its particular regulations. The attachment of the Eastern members, the difficulty of substituting another plan, with the consent of those who agree in disliking the bill, the defect of time &c, will however prevent any radical alterations. The most I hope is that some offensive violations of Southern jurisprudence may be corrected, and that the system may speedily undergo a reconsideration under the auspices of the Judges who alone will be able perhaps to set it to rights.

The Senate have sent back the plan of amendments with some alterations which strike in my opinion at the most salutary articles. In many of the States juries even in criminal cases, are taken from the State at large; in others from districts of considerable extent; in very few from the County alone. Hence a [torn out] like to the restraint with respect to *vicinage*, which has produced a negative on that clause. A fear of inconvenience from a constitutional bar to appeals below a certain value, and a confidence that such a limitation is not *necessary*,

SEPTEMBER 18. LOCATION OF THE CAPITAL.

Mr. MADISON felt himself compelled to move for striking out that part of the bill which provided that the temporary residence of Congress should continue at New York; as he conceived it irreconcilable with the spirit of the Constitution. If it was not from viewing it in this light, he should have given the bill no further opposition; and now he did not mean to enter on the merits of the main question.

From the Constitution, it appeared that the concurrence of the two Houses of Congress was sufficient to enable them to adjourn from one place to another; nay, the legal consent of the President was, in some degree, prescribed in the 7th section of article 1st, where it is declared, that every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on

have had the same effect on another article. Several others have had a similar fate. The difficulty of uniting the minds of men accustomed to think and act differently can only be conceived by those who have witnessed it.

A very important question is depending on the subject of a permanent seat for the fed^{l}. Gov^{t}. Early in the Session secret negociations were set on foot among the Northern States, from Penn^{a}., inclusively. The parties finally disagreeing in their arrangements, both made advances to the Southern members. On the side of N. Y. & N. Eng^{d}., we were led to expect the Susquehannah within a reasonable time, if we w^{d} sit still in N. York, otherwise we were threatened with Trenton. These terms were inadmissible to the friends of Potowmac. On the side of Penn^{a}., who was full of distrust and animosity agst N. Eng^{d} & N. York, the Potowmac was presented as the reward for the temporary advantages if given by the S. States. Some progress was made on this ground, and the prospect became flattering, when a reunion was produced among the original parties by circumstances which it w^{d} be tedious to explain. The Susquehannah has in consequence been voted. The bill is not yet brought in and many things may yet happen. We shall parry any decision if we can, tho' I see little hope of attaining our own object, the Eastern States being inflexibly opposed to the Potowmac & for some reasons which are more likely to grow stronger than weaker; and if we are to be placed on the Susquehannah, the sooner the better.—*Mad. MSS.*

a question of adjournment,) shall be presented to the President of the United States, and approved by him, before the same shall take effect. Any attempt, therefore, to adjourn by law, is a violation of that part of the Constitution which gives the power, exclusively, to the two branches of the Legislature. If gentlemen saw it in the same light, he flattered himself they would reject that part of the bill; and, however little they valued the reflection that this city was not central, which had been so often urged, they would be guided by arguments springing from a superior source.

He would proceed to state the reasons which induced him to be of this opinion: it is declared in the Constitution, that neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days; nor to any place than that in which the two Houses shall be sitting; from hence he inferred, that the two Houses, by a concurrence, could adjourn for more than three days, and to any other place which they thought proper; by the other clause he had mentioned, the Executive power is restrained from any interference with the Legislative on this subject; hence, he concluded, it would be dangerous to attempt to give to the President a power which the Constitution expressly denied him. He did not suppose that the attempt to vest the Executive with a power over the adjournment of the Legislature would absolutely convey the power, but he conceived it wrong to make the experiment. He submitted it to those gentlemen who were attached to the success of the bill, how far an unconstitutional declaration may impede its passage through the other branch of the Legislature.

It has been supposed by some, that the seat of Government may be at a place different from that where the Congress sits; and, although the former may be established by law, the Legislature might remove elsewhere; he could not subscribe to this doctrine. What is the Government of the United States for which a seat is to be provided? Will not the Government necessarily comprehend the Congress as a part? In

arbitrary Governments, the residence of the monarch may be styled the seat of Government, because he is within himself the supreme Legislative, Executive, and Judicial power; the same may be said of the residence of a limited monarchy, where the efficiency of the Executive operates, in a great degree, to the exclusion of the Legislative authority; but in such a Government as ours, according to the legal and common acceptation of the term, Government must include the Legislative power; so the term Administration, which in other countries is specially appropriated to the Executive branch of Government, is used here for both the Executive and Legislative branches; we, in official communications, say Legislative Administration or Executive Administration, according as the one or the other is employed in the exercise of its Constitutional powers. He mentioned these circumstances to show that they ought not to look for the meaning of terms used in the laws and Constitution of the United States, into the acceptation of them in other countries, whose situation and Government were different from that of United America. If his reasoning was just, he should conclude that the seat of Government would be at that place where both the Executive and Legislative bodies are fixed; and this depended upon the vote of the two branches of the Legislature. There was another clause favorable to this opinion; it was, that giving Congress authority to exercise exclusive legislation in all cases whatsoever over such district as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States; this was the only place where any thing respecting the seat of Government was mentioned; and would any gentleman contend that Congress might have a seat of Government over which they are empowered to exercise exclusive legislation, and yet reside at the distance of two or 300 miles from it? Such a construction would contradict the plain and evident meaning of the Constitution, and as such was inadmissible.

He hoped these observations would be attended to; and

did not doubt but if seen in their true light they would induce the House to reject that part of the bill which he moved to have struck out.[1]

SEPTEMBER 28. LOCATION OF THE CAPITAL.

Mr. MADISON contended that the amendment proposed by the Senate was a departure from every principle adopted by the House; but he would not trouble them with a recapitulation of arguments, which he feared would be unavailing; he wished, however, that the House would provide against one inconvenience, which was, to prevent the district in Pennsylvania, chosen by Congress, from being deprived for a time of

[1] TO EDMUND PENDLETON.

N. Y., Sep[r] 23, 1789.

DEAR SIR,—The pressure of unfinished business has suspended the adjournment of Cong[s] till saturday next. Among the articles which required it was the plan of amendments, on which the two Houses so far disagreed as to require conferences. It will be impossible I find to prevail on the Senate to concur in the limitation on the *value* of appeals to the Supreme Court, which they say is unnecessary, and might be embarrassing in questions of national or Constitutional importance in their principle, tho' of small pecuniary amount. They are equally inflexible in opposing a definition of the *locality* of Juries. The vicinage they contend is either too vague or too strict a term, too vague if depending on limits to be fixed by the pleasure of the law, too strict if limited to the County. It was proposed to insert after the word Juries, "with the accustomed requisites," leaving the definition to be construed according to the judgment of professional men. Even this could not be obtained. The truth is that in most of the States the practice is different, and hence the irreconcileable difference of ideas on the subject. In some States, jurors are drawn from the whole body of the community indiscriminately; in others, from large districts comprehending a number of Counties; and in a few only from a single County. The Senate suppose also that the provision for vicinage in the Judiciary bill, will sufficiently quiet the fears which called for an amendment on this point. On a few other points in the plan the Senate refuse to join the House of Rep[s].

The bill establishing the permanent Seat of Gov[t] has pas[d] the H. of Rep[s] in fav[r] of the Susquehannah. Some of the Southern members,

the benefit of the laws. This, he apprehended, would be the case, unless Congress made provision for the operation of the laws of Pennsylvania, in the act by which they accepted of the cession of that State; for the State relinquished the right of legislation from the moment that Congress accepted of the district. The propriety of this proposition was so apparent, that he had not a doubt but the House would consent to it. He then moved the following proviso: "And provided, that nothing herein contained shall be construed to affect the operation of the laws of Pennsylvania, within the district ceded and accepted, until Congress shall otherwise provide by law." [1]

TO GEORGE WASHINGTON.

WASH. MSS.

ORANGE, Nov[r] 20, 1789.

DEAR SIR,—

It was my purpose to have dropped you a few lines from Philad[a], but I was too much indisposed during

despaired so much of ever getting anything better, that they fell into the majority. Even some of the Virginians leaned that way. My own judgment was opposed to any compromise, on the supposition that we had nothing worse to fear than the Susquehannah, and could obtain that at any time, either by uniting with the Eastern States or Pennsylv[a] The bill however is by no means sure of passing the Senate in its present form. It is even possible that it may fall altogether. Those who wish to do nothing at this time, added to those who disapprove of the Susquehannah, either as too far South or too far North, or not susceptible of early conveniences for the fiscal administration, may form a majority who will directly or indirectly frustrate the measure. In case of an indirect mode, some other place will be substituted for Susquehannah, as Trenton or Germantown, neither of which can I conceive be effectually established, and either of which might get a majority composed of sincere and insidious votes. . . . —*Mad. MSS.*

[1] The passage of this amendment required the bill to go back to the Senate, and Congress adjourned September 29th before there was a chance for further action. Madison thus prevented the loss of the capital to the Potomac party.

my detention there to avail myself of that pleasure. Since my arrival here I have till now been without a fit conveyance to the post office.

You will recollect the contents of a letter shewn you from Mr. Innes to Mr. Brown. Whilst I was in Philad[a] I was informed by the latter, who was detained there, as well as myself by indisposition that he had rec[d] later accounts though not from the same correspondent, that the Spaniards have finally put an entire stop to the trade of our Citizens down the river. The encouragements to such as settle under their own Government are continued.

A day or two after I got to Philad[a] I fell in with Mr. Morris. He broke the subject of the residence of Cong[s], and made observations which betrayed his dislike of the upshot of the business at N. York, and his desire to keep alive the Southern project of an arrangement with Pennsylvania. I reminded him of the conduct of his State, and intimated that the question would probably sleep for some time in consequence of it. His answer implied that Congress must not continue at New York, and that if he should be freed from his Engagements with the E. States by their refusal to take up the bill and pass it as it went to the Senate, he should renounce all confidence in that quarter, and speak seriously to the S. States. I told him they must be spoken to very seriously, after what had passed, if Penn[a] expected them to listen to her, that indeed there was probably an end to further intercourse on the subject. He signified that if he should speak it would be in earnest, and he believed

that no one would pretend that his conduct would justify the least distrust of his going through with his undertakings; adding however that he was determined & accordingly gave me as he had given others notice that he should call up the postponed bill as soon as Cong[s] should be reassembled. I observed to him that if it were desirable to have the matter revived we could not wish to have in it a form more likely to defeat itself. It was unparliamentary and highly inconvenient; and would therefore be opposed by all candid friends to his object as an improper precedent, as well as by those who were opposed to the object itself. And if he should succeed in the Senate, the irregularity of the proceeding would justify the other House in withholding the signature of its Speaker, so that the bill could never go up to the President. He acknowledged that the bill could not be got thro' unless it had a majority of both Houses on its merits. Why then, I asked, not take it up anew? He said he meant to bring the gentlemen who had postponed the bill to the point, acknowledged that he distrusted them, but held his engagements binding on him, until this final experiment should be made on the respect they meant to pay to theirs. I do not think it difficult to augur from this conversation the views which will govern Penn[a] at the next Session. Conversations held by Grayson both with Morris & others, in Philad[a], and left by him in a letter to me, coincide with what I have stated. An attempt will first be made to alarm N. York and the Eastern States into the plan

postponed, by holding out the Potowmac & Philad[a] as the alternative, and if the attempt should not succeed, the alternative will then be held out to the Southern members. On the other hand N. Y. & the E. States will enforce the policy of delay, by threatening the S. States as heretofore, with German Town or Trenton or at least Susquehannah, and will no doubt carry the threat into execution if they can, rather y[n] suffer an arrangement to take place between Pen[a] & the S. States.

I hear nothing certain from the Assembly. It is said that an attempt of Mr. H. to revive the project of commutables has been defeated, that the amendments have been taken up, and are likely to be put off to the next Session, the present house having been elected prior to the promulgation of them. This reason would have more force, if the amendments did not so much correspond as far as they go with the propositions of the State Convention, which were before the public long before the last Election. At any rate, the Assembly might pass a vote of *approbation*, along with the postponement, and assign the reason for referring the *ratification* to their successors. It is probable that the scruple has arisen with the disaffected party. If it be construed by the public into a latent hope of some contingent opportunity for promoting the war ag[st] the Gen[l] Government, I am of opinion the experiment will recoil on the authors of it. As far as I can gather, the great bulk of the late opponents are entirely at rest, and more likely to censure a further opposition

to the Gov^t^, as now administered than the Government itself. One of the principal leaders of the Baptists lately sent me word that the amendments had entirely satisfied the disaffected of his Sect, and that it would appear in their subsequent conduct.

I ought not to conclude without some apology for so slovenly a letter. I put off writing it till an opportunity should present itself not knowing but something from time to time might turn up that would make it less unworthy of your perusal. And it has so happened that the opp^y^ barely gives me time for this hasty scrawl.

With the most perfect esteem & Affect attachment I remain Dear Sir Y^r^ Mo^s^ Obed^t^ Servt

TO GEORGE WASHINGTON.

WASH. MSS.

ORANGE, Decr 5, 1789.

DEAR SIR,—

Since my last I have been furnished with the inclosed copy of the letter from the Senators of this State to its Legislature.[1] It is well calculated to keep alive the disaffection to the Government, and is accordingly applied to that use by violent partizans. I understand the letter was written by the first

[1] The letter was dated September 28th and signed by Richard Henry Lee and William Grayson. It said: "It is impossible for us not to see the necessary tendency to consolidated Empire, in the natural operation of the Constitution, if no further amended than now proposed," and that civil liberty could not exist in an undivided government over so great a territory as the United States. They favored persevering application by the States to Congress for more amendments, and if it failed then a convention should be called.—*Mad. MSS.*

subscriber of it, as indeed is pretty evident from the style and strain of it. The other *it is said*, subscribed it with reluctance. I am less surprised that this should have been the case than that he should have subscribed it at all.

My last information from Richmond is contained in the following extract from a letter of the 28th of Nov^r^, from an intelligent member of the H. of Delegates. "The revenue bill which proposes a reduction of the public taxes one fourth below the last year's amount is with the Senate. Whilst this business was before the H. of Delegates a proposition was made to receive Tobacco & Hemp as commutables, which was negatived, the House determining still to confine the collection to specie and to specie warrants. Two or three petitions have been presented which asked a general suspension of Executions for twelve months; they were read, but denied a reference. The Assembly have passed an Act for altering the time for choosing Representatives to Congress, which is now fixed to be on the third Monday in September, suspending the powers of the Representative until the Feby after his election. This change was made to suit the time of the annual meeting of Congress. The fate of the Amendments proposed by Congress to the Genl Government is still in suspense. In a Com^e^ of the whole House the first ten were acceded to with little opposition; for on a question taken on each separately, there was scarcely a dissenting voice. On the two last a debate of some length took place, which ended in rejection.

Mr. E. Randolph who advocated all the others stood on this contest in the front of opposition. His principal objection was pointed ag^st^ the word '*retained*,' in the eleventh proposed amendment, and his argument if I understood it was applied in this manner—that as the rights declared in the first ten of the proposed amendments were not all that a free people would require the exercise of, and that as there was no criterion by which it could be determined whether any other particular right was retained or not, it would be more safe and more consistent with the spirit of the 1st & 17th amend^ts^ proposed by Virginia that this reservation ag^st^ constructive power, should operate rather as a provision ag^st^ extending the powers of Cong^s^ by their own authority, than a protection to rights reducible to no definite certainty. But others, among whom I am one, see not the force of this distinction, for by preventing an extension of power in that body from which danger is apprehended, safety will be insured, if its powers be not too extensive already, & so by protecting the rights of the people & of the States, an improper extension of power will be prevented & safety made equally certain. If the House should agree to the Resolution for rejecting the two last, I am of opinion it will bring the whole into hazard again, as some who have been decided friends to the ten first think it would be unwise to adopt them without the 11 & 12th. Whatever may be the fate of the amendments submitted by Congress, it is probable that an application for further amend-

ments will be made by this Assembly, for the opposition to the federal Constitution is in my opinion reduced to a single point, the power of direct taxation —those who wish the change are desirous of repeating the application, whilst those [who] wish it not are indifferent on the subject, supposing that Cong^{s} will not propose a change which would take from them a power so necessary for the accomplishment of those objects which are confided to their care. Messrs Joseph Jones & Spencer Roane are appointed Judges of the Genl Court, to fill the vacancies occasioned by the death of Mr. Carey & the removal of Mr. Mercer to the Court of appeals."

The difficulty started agst the amendments is really unlucky, and the more to be regretted as it springs from a friend to the Constitution. It is a still greater cause of regret, if the distinction be, as it appears to me, altogether fanciful. If a line can be drawn between the powers granted and the rights retained, it would seem to be the same thing, whether the latter be secured by declaring that they shall not be abridged, or that the former shall not be extended. If no such line can be drawn, a declaration in either form would amount to nothing. If the distinction were just it does not seem to be of sufficient importance to justify the risk of losing the amend^{ts}, of furnishing a handle to the disaffected, and of arming N. C. with a pretext, if she be disposed to prolong her exile from the Union.

With every sentiment of respect & attachment I am Dr Sir Yr Obed^{t} & hble Servt

MEMORANDUM. DECEMBER, 1789.[1]

MAD. MSS.

On the supposition that the business can be more properly conducted by a private agent at London, than a public minister at a third Court, the letter and instructions for the former character appear to be well adapted to the purpose. If any remark were to be made, it would relate merely to the form, which it is conceived would be made rather better by transposing the order of the two main subjects. The fulfilment of the Treaty already made seems to be primary to the inquiries requisite to a subsequent Treaty.

The reasoning assigned to those who opposed a commercial discrimination, states the views of a part only of that side of the question. A considerable number, both in the Senate & H. of Repˢ objected to the measure as defective in energy, rather than as wrong in its principle. In the former, a Committee was appointed, who reported a more energetic plan, and in the latter, leave to bring in a bill, was given to a member who explained his views to be similar. Both of these instances were posterior to the miscarriage of the discrimination first proposed.

As Mʳ Jefferson may be daily expected, as it is possible he may bring informations throwing light on the subject under deliberation, and as it is probable use may be made of his own ideas with regard to it, a quere suggests itself, whether the advantage of

[1] Prepared probably for the President, who consulted Madison at this time more than he did any other person outside of the Cabinet.

consulting with him might not justify such a delay, unless there be special reasons for expedition.

TO THOMAS JEFFERSON MAD. MSS.

NEW YORK Jan? 24. 1790.

DEAR SIR

A dysenteric attack at Georgetown with its effects retarded my journey so much that I did not arrive here till a few days ago. I am free at present from the original complaint, but a little out of order with the piles generated by that or the medicine it required.

The Cato in which were the busts of P. Jones and the box of books for myself never arrived till the day before yesterday, having sprung a leak which obliged her to put into an English Port. Everything consigned to me appears as far as the parcels are yet opened to have escaped injury. I beg you to accept my unfeigned thanks for the proof medals, of which the value is much enhanced in my estimation by the circumstance which demands that tribute. I have supposed that I could not better dispose of the letters to Mr Eppes as well as that to Col: Lewis than by inclosing them to yourself.

The business of Cong^{s} is as yet merely in embryo. The principal subjects before them are the plans of revenue and the Militia, reported by Hamilton & Knox. That of the latter is not yet printed, and being long is very imperfectly understood. The other has scarcely been long enough from the press to

be looked over.[1] It is too voluminous to be sent entire by the mail. I will by the next mail commence a transmission in fractions. Being in possession at present of a single copy only I cannot avail myself of this opportunity for the purpose. You will find a sketch of the plan in one of the Newspapers herewith inclosed. Nothing has passed either in Cong[s] or in conversation from which a conjecture can be formed of the fate of the Report. Previous to its being made, the avidity for stock had raised it from a few shillings to 8s or 10s in the pound, and emissaries are still exploring the interior & distant parts of the Union in order to take advantage of the ignorance of holders. Of late the price is stationary, at or fluctuating between the sums last mentioned. From this suspence it would seem as if doubts were entertained concerning the success of the plan in all its parts.

I take for granted that you will before the receipt of this, have known the ultimate determination of the President on your appointment.[2] All that I am able to say on the subject is that a universal anxiety is expressed for your acceptance, and to

[1] August 28, 1789, a memorial and petition to Congress from public creditors in Pennsylvania praying that provision be made for the public debt was referred to a committee of which Madison was chairman. September 10th he reported in favor of taking the matter up at the next session. January 14th Hamilton's report was submitted in favor of "funding and assumption."

[2] Washington informed Jefferson of his appointment to be Secretary of State October 10, 1789. February 14, 1790, from Monticello Jefferson wrote definitely accepting and soon thereafter assumed office.—*The Department of State; History and Functions* (Hunt), 60, 61.

repeat my declarations that such an event will be more conducive to the general good, and perhaps to the very objects you have in view in Europe, than your return to your former station.

I do not find that any late information has been received with regard to the Revolution in France. It seems to be still unhappily forced to struggle with the adventitious evils of public scarcity, in addition to those naturally thrown in its way by antient prejudices and hostile interests. I have a letter from Hav^r^ of the 13th Nov^r^, which says that wheat was then selling at 10 liv^rs^ per Bushel, and flour at 50 liv^s^ per 100 lbs, and the demand pressing for all kinds of materials for bread. The letter adds that a bounty of 2 liv^s^ per 100 lb. marc on wheat & on flour in proportion &c &c was to commence the 1st Decr last & continue till the 1st of July next, in fav^r^ of imports from any quarter of the Globe.

With sincerest affection I am Dr Sir Your Obed^t^ friend & Servt.

SPEECHES IN THE FIRST CONGRESS—SECOND SESSION, 1790.

FEBRUARY 3. NATURALIZATION OF ALIENS [1]

When we are considering the advantages that may result from an easy mode of naturalization, we ought also to consider the cautions necessary to guard against abuses. It is

[1] The bill became a law March 26, 1790, and provided for admission to citizenship of free white aliens of good moral character after residence in the United States of two years.—1 Stat., 103.

no doubt very desirable that we should hold out as many inducements as possible for the worthy part of mankind to come and settle amongst us, and throw their fortunes into a common lot with ours. But why is this desirable? Not merely to swell the catalogue of people. No, sir, it is to increase the wealth and strength of the community; and those who acquire the rights of citizenship, without adding to the strength or wealth of the community, are not the people we are in want of. And what is proposed by the amendment is, that they shall take nothing more than an oath of fidelity, and declare their intention to reside in the United States. Under such terms, it was well observed by my colleague, aliens might acquire the right of citizenship, and return to the country from which they came, and evade the laws intended to encourage the commerce and industry of the real citizens and inhabitants of America, enjoying at the same time all the advantages of citizens and aliens.

I should be exceedingly sorry, sir, that our rule of naturalization excluded a single person of good fame that really meant to incorporate himself into our society; on the other hand, I do not wish that any man should acquire the privilege, but such as would be a real addition to the wealth or strength of the United States.

It may be a question of some nicety, how far we can make our law to admit an alien to the right of citizenship, step by step; but there is no doubt we may, and ought to require residence as an essential.[1]

[1] TO THOMAS JEFFERSON

NEW YORK, Feby 4, 1790.

DEAR SIR,—

Your favor of Jany 9, inclosing one of Sept last did not get to hand till a few days ago.* The idea which the latter evolves is a great one; and suggests many interesting reflections to Legislators; particularly when contracting and providing for public debts. Whether it can be received in the extent to which your reasonings carry it, is a question

* See the letter in Ford's *Writings of Jefferson*, v., 115.

FEBRUARY 11. PUBLIC DEBT[1]

No gentleman, Mr. Chairman, has expressed more strongly than I feel, the importance and difficulty of the subject before us. Although I have endeavored to view it under all its aspects, and analyze it in all its principles, yet have I kept

which I ought to turn more in my thoughts than I have yet been able to do, before I should be justified in making up a full opinion on it. My first thoughts lead me to view the doctrine as not *in all respects* compatible with the course of human affairs. I will endeavour to sketch the grounds of my skepticism. "As the Earth belongs to the living, not to the dead, a living generation can bind itself only; in every Society the will of the majority binds the whole; according to the laws of mortality, a majority of those ripe for the exercise of their will do not live beyond the term of 19 years; to this term then is limited the validity of every act of the Society, nor can any act be continued beyond this term without an *express* declaration of the public will." This I understand to be the outline of the argument.

The Acts of a political society may be divided into three classes:

1. the fundamental constitution of the Government.

2. laws involving some stipulation, which renders them irrevocable at the will of the Legislature.

3. laws involving no such irrevocable quality.

1. However applicable in theory the doctrine may be to a Constitution, it seems liable in practice to some weighty objections.

Would not a Government ceasing of necessity at the end of a given term, unless prolonged by some Constitutional Act, previous to its expiration, be too subject to the casualty and consequences of an interregnum?

Would not a Government so often revised become too mutable & novel to retain that share of prejudice in its favor which is a salutary aid to the most rational Government?

Would not such a periodical revision engender pernicious factions

[1] On the same day Madison offered the following:

Resolved, That adequate funds ought to be provided for paying the interest and principal of the domestic debt, as the same shall be liquidated; and that in such liquidation, the present holders of public securities, which have been alienated, shall be settled with according to the highest market rate of such securities; and that the balance of the sums due from the public, be paid in such proportion to the original holder of such securities.

my mind open, and been anxious to aid my own reflections by the reflected light to be expected from gentlemen on this floor who enter into the discussion. For this purpose, I have chosen hitherto rather to be a hearer than a speaker on

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that might not otherwise come into existence; and agitate the public mind more frequently and more violently than might be expedient?

2. In the second class of acts involving stipulations, must not exceptions at least to the doctrine, be admitted?

If the earth be the gift of *nature* to the living, their title can extend to the earth in its *natural* state only. The *improvements* made by the dead form a debt against the living, who take the benefit of them. This debt cannot be otherwise discharged than by a proportionate obedience to the will of the Authors of the improvements.

But a case less liable to be controverted may perhaps be stated. Debts may be incurred with a direct view to the interests of the unborn as well as of the living. Such are debts for repelling a Conquest, the evils of which descend through many generations. Debts may even be incurred principally for the benefit of posterity: Such perhaps is the debt incurred by the U. States. In these instances the debts might not be dischargeable within the term of 19 years.

There seems, then, to be some foundation in the nature of things; in the relation which one generation bears to another, for the *descent* of obligations from one to another. Equity may require it. Mutual good may be promoted by it. And all that seems indispensable in stating the account between the dead and the living, is to see that the debts against the latter do not exceed the advances made by the former. Few of the incumbrances entailed on nations by their predecessors would bear a liquidation even on this principle.

3. Objections to the doctrine, as applied to the third class of Acts must be merely practical. But in that view alone they appear to be material.

Unless such temporary laws should be kept in force by acts regularly anticipating their expiration, all the rights depending on positive laws, that is most of the rights of property would become absolutely defunct, and the most violent struggles ensue between the parties interested in reviving & those interested in reforming the antecedent state of property. Nor does it seem improbable that such an event might be suffered to take place. The checks & difficulties opposed to the passage of laws which render the power of repeal inferior to an opportunity to reject, as a security against oppression, would here render the latter an insecure provision against anarchy. Add to this that the very

the subject, and should even at this moment have continued in my seat, but that the turn which the business has taken, renders it requisite for me now, if at all, to trouble the com-

possibility of an event so hazardous to the rights of property could not but depreciate its value; that the approach of the crisis wd increase the effect; that the frequent return of periods superseding all the obligations dependent on antecedent laws & usages, must by weakening the sense of them, co-operate with motives to licenciousness already too powerful; and that the general uncertainty & vicissitudes of such a state of things would, on one side, discourage every useful effort of steady industry pursued under the sanction of existing laws, and on the other, give an immediate advantage to the more sagacious over the less sagacious part of the Society.

I can find no relief from such embarrassments but in the received doctrine that a *tacit* assent may be given to established Governments & laws, and that this assent is to be inferred from the omission of an express revocation. It seems more practicable to remedy by well-constituted Governments the pestilent operation of this doctrine, in the unlimited sense in which it is at present recd, than it is to find a remedy for the evils necessarily springing from an unlimited admission of the contrary doctrine.

Is it not doubtful whether it be possible to exclude wholly the idea of an implied or tacit assent, without subverting the very foundation of Civil Society?

On what principle is it that the voice of the majority binds the minority? It does not result I conceive from a law of nature but from compact founded on utility. A greater proportion might be required by the fundamental Constitution of Society, if under any praticular circumstances it were judged eligible. Prior therefore to the establishment of this principle, *unanimity* was necessary; and rigid Theory, accordingly presupposes the assent of every individual to the rule, which subjects the minority to the will of the majority. If this assent cannot be given tacitly, or be not implied where no positive evidence forbids, no person born in Society, could on attaining ripe age, be bound by any acts of the majority, and either a unanimous renewal of every law would be necessary, as often as a new member should be added to the Society, or the express consent of every new member be obtained to the rule by which the majority decides for the whole.

If these observations be not misapplied, it follows that a limitation of the validity of all Acts to the computed life of the generation

mittee with my reflections, and the opinion in which they have terminated.

It has been said, by some gentlemen, that the debt itself does not exist in the extent and form which is generally supposed. I confess, sir, I differ altogether from the gentlemen who take that ground. Let us consider, first, by whom the debt was contracted, and then let us consider to whom it is due. The debt was contracted by the United States, who, with respect to that particular transaction, were in a national capacity. The Goverment was nothing more than the agent or organ, by which the whole body of the people acted. The change in the Government which has taken place has enlarged its national capacity, but it has not varied the national obligation, with respect to the engagements entered into by that transaction. For, in like manner, the present Government is nothing more than the organ, or agent, of the public. The obligation which they are under, is precisely the same with that under which the debt was contracted; although the

establishing them, is in some cases not required by theory, and in others not consistent with practice. They are not meant however to impeach either the utility of the principle as applied to the cases you have particularly in view, or the general importance of it in the eye of the Philosophical Legislator. On the contrary it would give me singular pleasure to see it first announced to the world in a law of the U. States, and always kept in view as a salutary restraint on living generations from *unjust* & *unnecessary* burdens on their successors. This is a pleasure however which I have no hope of enjoying. The spirit of Philosophical legislation has not prevailed at all in some parts of America and is by no means the fashion of this part, or of the present Representative Body. The evils suffered or feared weakness in Government and licenciousness in the people, have turned the attention more towards the means of strengthening the powers of the former, than of narrowing their extent in the minds of the latter. Besides this it is so much easier to descry the little difficulties immediately incident to every great plan, than to comprehend its general & remote benefits, that further light must be added to the Councils of our Country before many truths which are seen through the medium of Philosophy, become visible to the naked eye of the ordinary politician.—*Mad. MSS.*

Government has been changed, the nation remains the same. There is no change in our political duty, nor in the moral or political obligation. The language I now use, sir, is the language of the Constitution itself; it declares that all debts shall have the same validity against the United States, under the new, as under the old form of Government. The obligation remains the same, though I hope experience will prove that the ability has been favorably varied.

The next question is, to what amount the public are at present indebted? I conceive the question may be answered in a few words. The United States owe the value they received, which they acknowledge, and which they have promised to pay: what is that value? It is a certain sum in principal, bearing an interest of six per cent. No logic, no magic, in my opinion, can diminish the force of the obligation.

The only point on which we can deliberate is, to whom the payment is really due; for this purpose, it will be proper to take notice of the several descriptions of people who are creditors of the Union, and lay down some principles respecting them, which may lead us to a just and equitable decision. As there is a small part of the debt yet unliquidated, it may be well to pass it by and come to the great mass of the liquidated debt. It may here be proper to notice four classes into which it may be divided:

First. Original creditors, who have never alienated their securities.

Second. Original creditors who have alienated.

Third. Present holders of alienated securities.

Fourth. Intermediate holders, through whose hands securities have circulated.

The only principles that can govern the decision on their respective pretensions, I take to be, 1. Public Justice; 2. Public Faith; 3. Public Credit; 4. Public Opinion.

With respect to the first class, there can be no difficulty. Justice is in their favor, for they have advanced the value which they claim; public faith is in their favor, for the written

promise is in their hands; respect for public credit is in their favor, for if claims so sacred are violated, all confidence must be at an end; public opinion is in their favor, for every honest citizen cannot but be their advocate.

With respect to the last class, the intermediate holders, their pretensions, if they have any, will lead us into a labyrinth, for which it is impossible to find a clew. This will be the less complained of, because this class were perfectly free, both in becoming and ceasing to be creditors; and because, in general, they must have gained by their speculations.

The only rival pretensions then are those of the original creditors, who have assigned, and of the present holders of the assignments.

The former may appeal to justice, because the value of the money, the service, or the property advanced by them, has never been really paid to them.

They may appeal to good faith, because the value stipulated and expected, is not satisfied by the steps taken by the Government. The certificates put into the hands of the creditors, on closing their settlements with the public, were of less real value than was acknowledged to be due; they may be considered as having been forced, in fact, on the receivers. They cannot, therefore, be fairly adjudged an extinguishment of the debt. They may appeal to the motives for establishing public credit, for which justice and faith form the natural foundation. They may appeal to the precedent furnished by the compensation allowed to the army during the late war, for the depreciation of bills, which nominally discharged the debts. They may appeal to humanity, for the sufferings of the military part of the creditors can never be forgotten, while sympathy is an American virtue. To say nothing of the singular hardship, in so many mouths, of requiring those who have lost four-fifths or seven-eighths of their due, to contribute the remainder in favor of those who have gained in the contrary proportion.

On the other hand, the holders by assignment, have claims,

which I by no means wish to depreciate. They will say, that whatever pretensions others may have against the public, these cannot effect the validity of theirs. That if they gain by the risk taken upon themselves, it is but the just reward of that risk. That as they hold the public promise, they have an undeniable demand on the public faith. That the best foundation of public credit is that adherence to literal engagements on which it has been erected by the most flourishing nations. That if the new Government should swerve from so essential a principle, it will be regarded by all the world as inheriting the infirmities of the old. Such being the interfering claims on the public, one of three things must be done; either pay both, reject wholly one or the other, or make a *composition* between them on some principle of equity. To pay both is perhaps beyond the public ability; and as it would far exceed the value received by the public, it will not be expected by the world, nor even by the creditors themselves. To reject wholly the claims of either is equally inadmissible; such a sacrifice of those who possess the written engagements would be fatal to the proposed establishment of public credit; it would moreover punish those who had put their trust in the public promises and resources. To make the other class the sole victims is an idea at which human nature recoils.

A composition, then, is the only expedient that remains; let it be a liberal one in favor of the present holders, let them have the highest price which has prevailed in the market; and let the residue belong to the original sufferers. This will not do perfect justice; but it will do more real justice, and perform more of the public faith, than any other expedient proposed. The present holders, where they have purchased at the lowest price of the securities, will have a profit that cannot reasonably be complained of; where they have purchased at a higher price, the profit will be considerable; and even the few who have purchased at the highest price cannot well be losers, with a well funded interest of six per cent.

The original sufferers will not be fully indemnified; but they will receive, from their country, a tribute due to their merits, which, if it does not entirely heal their wounds, will assuage the pain of them. I am aware, that many plausible objections will lie against what I have suggested, some of which I foresee and will take some notice of. It will be said, that the plan is impracticable; should this be demonstrated, I am ready to renounce it; but it does not appear to me in that light. I acknowledge that such a scale as has often been a subject of conversation, is impracticable.

The discrimination proposed by me, requires nothing more than a knowledge of the present holders, which will be shown by the certificates; and of the original holders, which the office documents will show. It may be objected, that if the Government is to go beyond the literal into the equitable claims against the United States, it ought to go back to every case where injustice has been done. To this the answer is obvious: the case in question is not only different from others in point of magnitude and of practicability, but forces itself on the attention of the committee, as necessarily involved in the business before them. It may be objected, that public credit will suffer, especially abroad; I think this danger will be effectually obviated by the honesty and disinterestedness of the Government displayed in the measure, by a continuance of the punctual discharge of foreign interest, by the full provision to be made for the whole foreign debt, and the equal punctuality I hope to see in the future payments on the domestic debts. I trust also, that all future loans will be founded on a previous establishment of adequate funds; and that a situation, like the present, will be thereby rendered impossible.

I cannot but regard the present case as so extraordinary, in many respects, that the ordinary maxims are not strictly applicable to it. The fluctuations of stock in Europe, so often referred to, have no comparison with those in the United States. The former never exceeded 50, 60, or 70 per cent:

can it be said, that because a Government thought this evil insufficient to justify an interference, it would view in the same light a fluctuation amounting to seven or eight hundred per cent.?

I am of opinion, that were Great Britain, Holland, or any other country, to fund its debts precisely in the same situation as the American debt, some equitable interference of the Government would take place. The South Sea scheme, in which a change, amounting to one thousand per cent. happened in the value of stock, is well known to have produced an interference, and without any injury whatever to the subsequent credit of the nation. It is true, that in many respects, the case differed from that of the United States; but, in other respects, there is a degree of similitude, which warrants the conjecture. It may be objected, that such a provision as I propose will exceed the public ability: I do not think the public unable to discharge honorably all its engagements, or that it will be unwilling, if the appropriations shall be satisfactory. I regret, as much as any member, the unavoidable weight and duration of the burdens to be imposed; having never been a proselyte to the doctrine, that public debts are public benefits. I consider them, on the contrary, as evils which ought to be removed as fast as honor and justice will permit, and shall heartily join in the means necessary for that purpose. I conclude with declaring, as my opinion, that if any case were to happen among individuals, bearing an analogy to that of the public, a Court of Equity would interpose for its redress; or that if a tribunal existed on earth, by which nations could be compelled to do right, the United States would be compelled to do something not dissimilar in its principles to what I have contended for.

FEBRUARY 18. PUBLIC DEBT

Mr. MADISON said, that the opponents of his proposition had imposed on its friends not only a heavy task, by the number of their objections, but a delicate one by the nature

of some of them. It had been arraigned as an embarrassing measure which ought to be facilitated, and producing discussions which might end in disagreeable consequences. However painful it might be to contradict the wishes of gentlemen whom he respected, he could promise nothing more in the present case than his endeavors to disappoint their apprehensions. When his judgment could not yield to the propositions of others, the right to make and support his own, was a right which he could never suffer to be contested. In exercising it, he should study to maintain that moderation and liberality which were due to the greatness of the subject before the committee. He felt pleasure in acknowledging that the like spirit had, in general, directed the arguments on the other side. Free discussions, thus conducted, are not only favorable to a right decision, but to a cheerful acquiescence of the mistaken opponents of it. They might have the further advantage of recommending the results to the public, by fully explaining the grounds of it. If the pretensions of a numerous and meritorious class of citizens be not well founded, or cannot be complied with, let them see that this is the case, and be soothed, under their disappointment, with the proof that they have not been overlooked by their country.

He would proceed now to review the grounds on which the proposition had been combated; which he should do without either following those who had wandered from the field of fair argument, or avoiding those who had kept within its limits.

It could not have escaped the committee, that the gentlemen to whom he was opposed, had reasoned on this momentous question as on an ordinary case in a Court of Law; that they had equally strained all the maxims that could favor the purchasing, or be adverse to the original holder; and that they had dwelt with equal pleasure on every circumstance which could brighten the pretensions of the former, or discredit those of the latter. He had not himself attempted, nor

did he mean to undervalue the pretensions of the actual holders. In stating them, he had even used as strong terms as they themselves could have dictated; but beyond a certain point he could not go. He must renounce every sentiment which he had hitherto cherished, before his complaisance could admit that America ought to erect the monuments of her gratitude, not to those who saved her liberties, but to those who had enriched themselves in her funds.

All that he wished was, that the claims of the original holders, not less than those of the actual holders, should be fairly examined and justly decided. They had been invalidated by nothing yet urged. A debt was fairly contracted; according to justice and good faith, it ought to have been paid in gold or silver; a piece of paper only was substituted. Was this paper equal in value to gold or silver? No. It was worth, in the market, which the argument for the purchasing holders makes the criterion, no more than one-eighth or one-seventh of that value. Was this depreciated paper freely accepted? No. The Government offered that or nothing. The relation of the individual to the Government, and the circumstances of the offer, rendered the acceptance a forced, not a free one. The same degree of constraint would vitiate a transaction between man and man before any Court of Equity on the face of the earth. There are even cases where consent cannot be pretended; where the property of the planter or farmer had been taken at the point of the bayonet, and a certificate presented in the same manner. But why did the creditors part with their acknowledgment of the debt? In some instances, from necessity; in others, from a well-founded distrust of the public. Whether from the one or the other, they had been injured; they had suffered loss, through the default of the debtor; and the debtor cannot, in justice or honor, take advantage of the default.

Here, then, was a debt acknowledged to have been once due, and which was never discharged; because the payment was forced and defective. The balance, consequently, is still

due, and is of as sacred a nature as the claims of the purchasing holder can be; and if both are not to be paid in the whole, is equally entitled to payment in part. He begged gentlemen would not yield too readily to the artificial niceties of forensic reasoning; that they would consider not the form, but the substance—not the letter, but the equity—not the bark, but the pith of the business. It was a great and an extraordinary case; it ought to be decided on the great and fundamental principles of justice. He had been animadverted upon for appealing to the heart as well as the head: he would be bold, nevertheless, to repeat, that, in great and unusual questions of morality, the heart is the best judge.

It had been said, by a member from Massachusetts, that the proposition was founded on a new principle in Congress. If the present Congress be meant, that is not strange, for Congress itself is new; if the former Congress be meant, it is not true, for the principle is found in an act which had been already cited. After the pay of the army had, during the war, been nominally and legally discharged in depreciated paper, the loss was made up to sufferers.

It had been said, by a member from New York, that this case was not parallel, there being no third party like the present holders of certificates. This objection could not be valid. The Goverment paid ten dollars worth in fact, but only one to the soldier. The soldier was then the original holder. The soldier assigned it to the citizen; the citizen then became the actual holder. What was the event? The loss of the original holder was repaired, after the actual holder had been settled with, according to the highest market value of his paper.

He did not mean, however, to decide on the whole merits of this last transaction; or to contend for a similitude, in all respects, between the two kinds of paper. One material difference was, that the bills of credit, by more frequent transfers, and by dividing the change of value among a greater number of hands, rendered the effect of less consequence to

individuals, and less sensible to the public mind. But this difference, whatever force it might give to the claims of the purchasing holder of certificates, could diminish nothing from the claims of the original holders who assigned them.

It had been said, by another member from Massachusetts, that the old Government did every thing in its power. It made requisitions, used exhortations, and in every respect discharged its duty; but it was to be remembered, that the debt was not due from the Government, but the United States. An attorney, with full powers to form, without the means to fulfil engagements, could never, by his ineffectual though honest efforts, exonerate his principal.

He had been repeatedly reminded of the address of Congress in 1783, which rejected a discrimination between original and purchasing holders. At that period, the certificates to the army, and citizens at large, had not been issued. The transfers were confined to loan-office certificates, were not numerous, and had been, in great part, made with little loss to the original creditor. At present, the transfers extend to a vast proportion of the whole debt, and the loss to the original holders has been immense. The injustice which has taken place has been enormous and flagrant, and makes redress a great national object. This change of circumstances destroys the argument from the act of Congress referred to; but if implicit regard is to be paid to the doctrines of that act, any modification of the interest of the debt will be as inadmissible as a modification of the principal.

It had been said, that if the losses of the original creditors are entitled to reparation, Congress ought to repair those suffered from paper money—from the ravages of war, and from the act of barring claims not produced within a limited time. As to the paper money, either the case is applicable, or it is not; if not applicable, the argument fails; if applicable, either the depreciated certificates ought to be liquidated by a like scale, as was applied to the depreciated money; or the money, even if the whole mass of it was still in circulation,

ought now to be literally redeemed, like the certificates. Leaving the gentleman to make his own choice of these dilemmas, he would only add, himself, that if there were no other difference between the cases, the manifest impossibility of redressing the one, and the practicability of redressing the other, was a sufficient answer to the objection. With respect to the towns burnt, and other devastations of war, it was taught, by the writers on the law of nations, that they were to be numbered among the inevitable calamities of mankind. Still, however, a Government owed them every alleviation which it could conveniently afford; but no authority could be found that puts on the same footing with those calamities, such as proceed from a failure to fulfil the direct and express obligations of the public. The just claims barred by the act of limitation, were, in his opinion, clearly entitled to redress. That act was highly objectionable. The public, which was interested in shortening the term, undertook to decide, that no claim, however just, should be admitted, if not presented within nine months. The act made none of the exceptions usual in such acts, not even in favor of the most distant parts of the Union. In many instances, it had been absolutely impossible for the persons injured to know of the regulation. Some of these instances were within his own knowledge. To limit the duration of a law to a period, within which it could not possibly be promulgated, and then take advantage of the impossibility, would be imitating the Roman tyrant, who posted up his edicts so high that they could not be read, and then punished the people for not obeying them.

It has been said that if the purchased certificates were funded at the rate proposed, they would fall in the market, and the holders be injured. It was pretty certain, that the greater part, at least, would be gainers. He believed that the highest market price, especially with the arrears of interest incorporated, well funded at six per cent. would prevent every loss that could justify complaint.

But foreigners had become purchasers, and ought to be

particularly respected. Foreigners, he remarked, had themselves made a difference between the value of the foreign and domestic debt; they would, therefore, the less complain of a difference made by Government here. It was his opinion that the terms stated in the proposition would yield a greater profit to the foreign purchasers than they could have got for their money if advanced by them in any of the funds of Europe.

The proposition had been charged with robbing one set of men to pay another. If there were robbery in the case, it had been committed on the original creditors. But, to speak more accurately, as well as more moderately, the proposition would do no more than withhold a part from each of two creditors, where both were not to be paid the whole.

A member from New York has asked, whether an original creditor, who had assigned his certificate, could, in conscience, accept a reimbursement in the manner proposed? He would not deny that assignments might have been made with such explanations, or under such circumstances, as would have that effect; but, in general, the assignments have been made with reference merely to the market value, and the uncertainty of the steps that might be taken by the Government. The bulk of the creditors had assigned under circumstances from which no scruple could arise. In all cases where a scruple existed, the benefit of the provision might be renounced. He would, in turn, ask the gentleman, whether there was not more room to apprehend that the present holder, who had got his certificate of a distressed and meritorious fellow-citizen for one-eighth, or one-tenth its ultimate value, might not feel some remorse in retaining so unconscionable an advantage?

Similar propositions, it was said, had been made and rejected in the State Legislatures. This was not a fact. The propositions made in the State Legislatures were not intended to do justice to the injured, but to seize a profit to the public.

But no petitions for redress had come from the sufferers.

Was merit, then, to be the less regarded, because it was modest? Perhaps, however, another explanation ought to be given. Many of the sufferers were poor and uninformed. Those of another description were so dispersed, that their interests and efforts could not be brought forward. The case of the purchasing holders was very different.

The Constitutionality of the proposition had been drawn into question. He asked whether words could be devised that would place the new Government more precisely in the same relation to the real creditors with the old? The power was the same; the obligation was the same. The means only were varied.

An objection had been drawn from the article prohibiting *ex post facto* laws. But as *ex post facto* laws relate to criminal, not civil cases, the Constitution itself requires this definition, by adding to a like restriction on the States an express one against retrospective laws of a civil nature.

It had been said that foreigners had been led to purchase, by their faith in the article of the Constitution, relating to the public debts. He would answer this objection by a single fact: Foreigners had shown, by the market price in Europe, that they trusted the nature of foreign debt more under the old Government, than the nature of the domestic debt under the new Government.

Objections to the measure had been drawn from its supposed tendency to impede public credit. He thought it, on the contrary, perfectly consistent with the establishment of public credit. It was in vain to say, that Government ought never to revise measures once decided. Great caution on this head ought, no doubt, to be observed: but there were situations in which, without some Legislative interposition, the first principles of justice, and the very ends of civil society, would be frustrated. The gentlemen themselves had been compelled to make exceptions to the general doctrine: they would probably make more before the business was at an end.

It had been urged, that if Government should interpose in

the present case, as interposition would be authorized in any case whatever where the stock might fluctuate, the principle would apply as well to a fall of sixty or seventy per cent. as to a fall of six hundred or seven hundred per cent. He could not admit this inference. A distinction was essential between an extreme case, and a case short of it. The line was difficult to be drawn; but it was no more incumbent on him than on his opponents to draw it. They themselves could not deny that a certain extremity of the evil would have justified the interposition. Suppose that the distress of the alienating creditors had been ten times as great as it was; that instead of two, three, or four shillings in the pound, they had received a farthing only in the pound; and that the certificates lay now in the hands of the purchasers in that state, or even at a less value, was there a member who would rise up and say, that the purchasers ought to be paid the entire nominal sum, and the original sufferer be entitled to no indemnification whatever?

Gentlemen had triumphed in the want of a precedent to the measure. No Government, it was said, had interposed to redress fluctuations in its public paper. But where was the Government that had funded its debts under the circumstances of the American debt? If no government had done so, there could be no precedent either for or against the measure, because the occasion itself was unprecedented. And if no similar occasion had before existed in any country, the precedent to be set would at least be harmless, because no similar occasion would be likely to happen in this.

If gentlemen persisted, however, in demanding precedents, he was happy in being able to gratify them with two, which, though not exactly parallel, were, on that account, of the greater force, since the interposition of Government had taken place where the emergency could less require them.

The first was the case of the Canada bills. During the war which ended in 1763, and which was attended with a revolution of the Government in Canada, the supplies obtained for

the French army in that province were paid for in bills of exchange and certificates. This paper depreciated, and was bought up chiefly by British merchants. The sum and the depreciation were so considerable as to become a subject of negotiation between France and Great Britain at the peace. The negotiations produced a particular article, by which it was agreed by France that the paper ought to be redeemed, and admitted by Great Britain that it should be redeemed at a liquidated value. In the year 1766 this article was accordingly carried into effect by Ministers from the two Courts, which reduced the paper in the hands of the British holders, in some instances, as much as seventy-five per cent. below its nominal value. It was stated, indeed, by the reporter of the case, that the holders of the paper had themselves concurred in the liquidation; but it was not probable that the concurrence was voluntary. If it was voluntary, it shows that they themselves were sensible of the equity of the sacrifice.

The other case was of still greater weight, as it had no relation to war or treaty, and took place in the nation which has been held up as a model with respect to public credit. In the year 1713, the civil list of Great Britain had fallen into arrears to the amount of £500,000. The creditors who had furnished supplies to the Government, had, instead of money, received debentures only from the respective officers. These had depreciated. In that state, they were assigned in some instances; in others, covenanted to be assigned. When the Parliament appropriated funds for satisfying these arrears, they inserted an express provision in the act, that the creditors who had been obliged, by the default of Government, to dispose of their paper at a loss, might redeem it from the assignees by repaying the actual price, with an interest of six per cent., and that all agreements and covenants to assign should be absolutely void. Here then was an interposition on the very principle, that a Government ought to redress the wrongs, sustained by its default, and on an occasion trivial when compared to that under consideration; yet it does

not appear that the public credit of the nation was injured by it.

The best source of confidence in Government was the apparent honesty of its views. The proposition could not possibly be ascribed to any other motive than this, because the public was not to gain a farthing by it. The next source was an experienced punctuality in the payments due from the Government. For this support to public credit, he relied on what had been experienced by a part of the foreign creditors; on the provision to be made for the residue; and on the punctuality which, he flattered himself, would be observed in all future payments of the domestic creditors. He was more apprehensive of injury to public credit from such modifications of the interest of the public debt as some gentlemen seemed to have in view. In these the public would be the gainer, and the plea of inability the more alarming, because it was so easy to set up, so difficult to be disproved, and for which, consequently, the temptations would be so alluring.

The impracticability of the measure was the remaining ground on which it had been attacked. He did not deny that it would be attended with difficulties, and that perfect justice would not be done. But these were not the questions. It was sufficient that a grievous injustice would be lessened, and that the difficulties might be surmounted. What he had in view was, that for the conveniency of claimants some authority should be provided, and properly distributed through the Union, in order to investigate and ascertain the claims; and that, for the security of the public, the burden of proof should be thrown on the claimants. A scrutiny on this plan, aided by original settlements in the books of the army department, and the State commissioners, and other office documents, would be a remedy, at once, for all the difficulties stated with regard to fictitious names, certificates issued as money by commissaries and quartermasters, due bills, &c.

For some particular cases, special provisions might be requisite. The case of loan-office certificates, alienated at early

periods, before they were much depreciated, fell under this description. Legacies might be another. He would have no objection to some special regulation, as to the payments of debts in certificates to persons within the British lines, said to have been authorized by the laws of New York; though he presumed few such payments had been made, and that of this few the greater part had, by this time, passed from the creditors into other hands. There might be a few other cases equally entitled to some particular attention in the details of the provision. As to the merchants who had compounded for their debts in certificates, or persons who had exchanged bonds for them, it could not be doubted that the transactions had reference to the market value of the paper, and therefore had nothing peculiar in them.

The expense incident to such a plan of investigation ought to form no difficulty. It bears no proportion to the expense already incurred by commissioners, &c., for effecting a less proportion of justice. Rather than justice should not be done, the expense might be taken out of the portion to the original sufferers.

The danger of frauds and perjuries had been worked up into a formidable objection. If these had always been equally alarming, no provision could ever have been made for the settlement or discharge of public debts. He reminded the committee of the frauds and perjuries for which a door had been opened by the final settlements, &c., of the frauds and perjuries inseparable from the collection of imposts and excises; yet these were all submitted to as necessary evils, because justice could not be done without them. The frauds and perjuries incident to this supplementary provision for justice must be very inconsiderable in number; and still more so, when compared either with the object to be obtained, or with the like evils already encountered in pursuit of a like object.

Great ingenuity and information had been exerted by the gentlemen on the other side in raising difficulties. He was sure that, after an adoption of the proposition, the same

exertion would be used in removing them, and with such aid, the idea of impracticability would vanish.

FEBRUARY 24. ASSUMPTION OF STATE DEBTS

Mr. MADISON observed on the measure, that the principle of it is in favor of the United States, so far as it may tend to bring about a final settlement and payment of all the accounts between the United States and the individual States. I believe this to be, however, a work of amazing difficulty, though not absolutely impossible. If it should be accomplished, it must go at least hand in hand with the Secretary's plan; and if it can be accomplished, it will do more honor to the revolution in our Government than almost any other measure.

I acknowledge that I cannot subscribe to all the reasons which some gentlemen urge. I am far from thinking that the assumption of the State debts will be the means of keeping the debts dispersed throughout the States. The assumption of those debts will give them, immediately, the character of debts of the United States; they will be embarked in the same bottom; they will take the same course, and, of consequence, will arrive at the same place where it is acknowledged the domestic debts of the United States, by degrees, have assembled. Whether they will remain in this place, or flow out of the United States altogether, is a question which time will decide. I look for such a revolution of the debt as will place the greatest part of it in foreign hands.

Neither do I subscribe to the opinion of the gentleman from Maryland (Mr. STONE) that the United States can raise more revenue by the exercise of a sole authority, than by the concurrent operation of the General and State Governments. There are, I conceive, objects of taxation of three kinds: The first is that which can only be operated upon by the United States; the second, which can be operated upon by the United States and individual States jointly; and, in the last place, such as can be best operated upon by the individual States only.

An impost or excise can be best regulated by the sole authority of the United States. Some taxes can be collected by the two Governments, without any interference: the land tax generally falls under this description; but in some particular cases, the local authority alone can make the proper provision. I conclude, therefore, that the authority of the United States and individual States, taken together, will draw more revenue than either can separately draw from the same sources.

But if we can accomplish the great object of doing full justice in so complicated a case, perhaps it will reward us for all the difficulties and sacrifices we shall be compelled to make; but, in order to accomplish it, we must go much further than the object of the proposition on the table.

Some gentlemen have made the passage of this resolution a condition of providing for the acknowledged debt of the United States. I think this a preposterous condition, and a language improper to be held, after the decision which has taken place. In priority of time and obligation, we ought to provide for the acknowledged debt. Before we determine to enter into a new obligation, we should see how far we are able to discharge those positively due by us. The connexion between these resolutions is not such as to require or justify the condition. The plan of the Secretary draws a distinction between the two debts.

If we are to make a common stock of the debts of the States, not yet discharged, it can only be justified by securing provision for those which are discharged; with this view, therefore I will now move to add to the resolution these words: "that effectual provision be, at the same time made for liquidating and crediting to the States, the whole of their expenditure during the war, as the same hath been or may be stated for the purpose: and, in such liquidation, the best evidence shall be received that the nature of the case will permit."

It may be said, that this is a superfluous condition; because there is a Board in existence charged with the trust; but, sir,

their power does not reach the great object contemplated. The limitation act has already barred a great number of equitable claims of one State; perhaps there are other States in the same predicament. I do not know whether the power of the Board has a latitude sufficient to receive such evidence as the nature of the case will permit; and if adequate provision is not made on this head, a great deal more injustice will be done than by a refusal to assume the State debts.[1]

[1] TO JAMES MADISON

N. Y. Febr 27 1790

HOND. SIR:

I have not yet recd a single line from Orange since I left it. The letter from my brother when at Alexa is the only written information that I have had the pleasure of, a few lines from Mr. Hite excepted. These gave an account of my sisters marriage, and added that about that period my mother was better. I am anxious to hear more on that subject, and indulge my hopes that her health will yet be re-established.

The papers inclosed at different times will have shewn the state of the business before Congs The proposition for compromizing the matter between original sufferers & the stockjobbers, after being long agitated was rejected by considerable majority, less perhaps from a denial of the justice of the measure, than a supposition of its impracticability. The idea is much better relished I find in the Country at large, than it was in this City. The subject now before Congs is the proposed assumption of the State debts. Opinions are much divided on it, and the result can not be foretold. These difficulties and discussions seem to have produced here a suspence of the public opinion. Stock has been stationary in consequence of it at about 7/. in the pound. I am afraid that the people at a distance from information will continue to be a prey to those who hover about the public councils, and communicate with emissaries all over the Continent. I wish it were possible to defend the uninformed from these impositions. The best they can do is not to deal with speculators, but to await patiently the event.

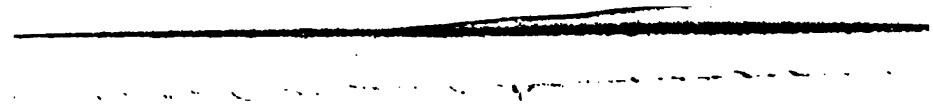
I find by a letter from Mr. Jefferson that grain is getting as high in Virga as here. The run on our market from Europe seems to be increasing. If the alarm be not artificial in France England &c. which can not be altogether the case, it is probable that the price will be high for several years.

I remain your dutiful son

Js. MADISON Jr.

I hope I shall be excused for connecting these provisions; because I think it impossible to separate them, in justice or propriety. If, by providing for the first, we can secure a provision for the last, we may do great honor to the councils of America, and establish its character for equity and justice. If we do not wish to decide precipitately on the question, I shall be content to delay it; and perhaps gentlemen may be impressed with the propriety of doing so till they take a view of the funds which are in contemplation, and see how effective and adequate they are likely to prove.

END OF VOLUME V.



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